

PUBLIC DEFENDER TASK FORCE MEETING AUGUST 24, 2017

AGENDA

WELCOME

APPROVE MINUTES OF LAST MEETING

SIXTH AMENDMENT CENTER UPDATE

NEED FOR OVERSIGHT OF INDIGENT DEFENSE SERVICES

UPDATES FROM OSPD AND CPCC

IMPACT OF NEW RULES

OTHER LOCAL DEVELOPMENTS

SEVEN PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM IN MISSISSIPPI

OSPD PLAN FOR STATEWIDE PUBLIC DEFENDER SYSTEM

Q&A

NEXT MEETING DATE

PUBLIC DEFENDER TASK FORCE MEETING JANUARY 9, 2017

MINUTES

WELCOME – Justice Kitchen’s (Task Force Chairman, representing the Supreme Court) welcomed the group and impressed upon them the importance of the work they were asked to do. He then asked everyone to introduce themselves and tell who they were representing. Present were Jennie Eichelberger, Mississippi Bar; Ta’shia Gordon, AOC; Hal Kittrell, Prosecutor Association; Jerrolyn Owens, AG; Tanisha Gates, Magnolia Bar; Demetrice Williams, Public Defender Association. Absent were legislative members, representative of Supervisor Association and Circuit Judge Association. André de Gruy and Beau Rudder were present representing the Office of State Defender and David Carroll and Mike Tartaglia with the Sixth Amendment Center were present and Professor Bob Boruchowitz also with 6AC joined by telephone.

STATE DEFENDER REPORT – Justice Kitchen’s asked the State Defender to provide a recap of the work of the PDTF and developments since last meeting. The Caseload Report utilizing AOC data from 2010-14 was discussed. The 2016 Legislative change on data collection, requiring AOC to begin collection of indigence status, was discussed. De Gruy mentioned his upcoming presentation to Circuit Clerk CE program sponsored by the Judicial College. A follow-up of the caseload assessment would be done with 2015-17 data as soon as available and resources allow. OSPD reported positive developments in Lamar and Pearl River County – each county is transitioning part-time defender positions to full-time positions. Also mentioned was a setback at OSPD – as a result of SB 2362 (2016 Regular Session) the Capital Conflicts program would be phased out leaving the counties to fund any new conflict death penalty cases.

SIXTH AMENDMENT CENTER UPDATE – David Carroll, director of the Sixth Amendment Center (6AC), was asked to provide an update on their progress. 6AC has visited 10 counties and received “outstanding cooperation” from county officials: judges, prosecutors, defense lawyers and sheriffs. They have begun the drafting process of the report they will be providing the PDTF. The report will describe the varied systems they observed and include an assessment of the quality of services being delivered.

Jail officials expressed a high level of concern about prolonged pretrial detentions. 6AC reports that judicial interference does not appear to be a prevailing issue. Public defenders not getting involved early in the case (often not until after indictment) and bail that defendants cannot make are significant factors.

Public defenders piecing together contracts with no caseload limitations were a serious concern. 6AC believes there will always be a need for involvement of the private bar however state [central] oversight is needed.

Although they were not asked to assess delivery of defense services in misdemeanor cases they raised concerns about their observations of “seriously deficient” representation of misdemeanor defendants, including proceedings without defense counsel present. 6AC recommends PDTF also look at misdemeanor representation.

Justice Kitchens: The adoption of the new Rules of Criminal Procedure should influence practice. Mr. Carroll reported that they had reviewed the Rules and agreed that they will be a significant improvement. But having the rules is only a starting point. There is a need for an entity at the state level to promulgate standards for indigent defense; to train to those standards; and evaluate the performance of local defenders to ensure standards are being met. Recent efforts in other states were provided as examples of the continued national movement. Utah and Idaho have many similarities to Mississippi and have established state oversight. These new systems anticipate state grants available to counties who cannot meet standards.

DA Kittrell: Based on observation and 9 month service as an acting public defender a standard for “indigence” is needed. Mr. Carroll agreed with the need for such a standard and pointed out they observed both extremes, everyone getting the public defender and cases being continued for no lawyer but judge not appointing because he felt person could afford counsel. DA Kittrell and Justice Kitchens discussed the problem of judges denying counsel because a person made bail or denying experts because counsel was retained. Justice Kitchens pointed out recent supreme court opinions on this issue. (e.g. *Levester Brown v. State*). All agreed that partial contributions from defendants were a good thing and the need for a flexible standard.

Justice Kitchens: Is ineffective assistance of counsel something 6AC is looking at? Mr. Carroll responded that while Professor Boruchowitz does look at that it is not a good measure because so many cases are pled.

Justice Kitchens: (returning to the point made earlier about defenders not getting on cases early) Some counties have different lawyers handling preliminary hearing and then they change lawyers at different stages. As a former prosecutor and defense attorney the earlier I could get in a case the better representation my client received, getting on in the beginning and staying on through verdict improves quality of representation. **DA Kittrell** agreed getting public defenders on the case earlier was essential and gave examples of how that benefits the prosecution in resolving some cases pre-indictment.

Justice Kitchens made specific request of DA Kittrell to continue on as a task force member after his term as president of Prosecutor Association ended and expressing his belief that continuity was important encouraged all members to remain with the task force.

6AC estimated completion date of substantive part of report is March.

NEXT MEETING DATE – It was decided that the next meeting would be scheduled as soon as possible after the preliminary report from 6AC was available. It was agreed that everyone needs an opportunity to review the findings before the meeting so a direction with specific recommendations could flow from the meeting.

DRAFT

SEVEN PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM IN MISSISSIPPI

1. There should be a state-level entity responsible for promulgating evidence-based standards for qualifications and performance of indigent defense providers; compensation ranges for providers; workload limits for providers and financial qualifications of clients for services.
2. The selection of chief defenders and staff should be based on merit and the recruitment of attorneys and support staff should involve special efforts aimed at achieving diversity among service providers.
3. Every defense delivery system must have the active participation of the private bar. The private bar participation may include defenders working part-time for an established public defender office; a controlled assigned counsel panel or on a contract for services basis. There should be a circuit level public defender office in each district responsible for limited service delivery and overall system oversight including reporting to state-level entity on standards compliance.
4. There must be parity between defense counsel and the prosecution with respect to workload, compensation and resources.
5. Where possible systems should establish comprehensive representation models that incorporate client-centered and interdisciplinary programs.
6. Clients must be screened for eligibility and attorneys assigned and notified of assignment as soon as possible after arrest or request for counsel. Once attorney-client relationship is established counsel should continue representation of the client until completion of the case.
7. Defense counsel's experience and training must match the complexity of the case and the attorneys existing workload must be taken into consideration at the time of assignment of new cases. Counsel must be provided with and required to attend continuing legal education in the area of defense practice. Counsel must be subject to supervision and systematically reviewed for quality and efficiency according to adopted standards.

Alabama



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in Alabama by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Alabama, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: none

Branch of government: executive

The Office of Indigent Defense Services (OIDS) is an executive branch agency housed in the Department of Finance, responsible for overseeing all indigent defense services, both primary and conflict. The Finance Director appoints the OIDS Director to a three-year term (termination for just cause only) from three names nominated by the Alabama State Bar, Board of Commissioners.

OIDS is statutorily obligated to set standards related to, among others: fiscal responsibility and accountability; minimum attorney qualifications, training, and other standards by case type; caseload management; attorney performance standards; the independent, efficient, and competent representation of conflict defendants; indigency and partial-indigency determinations; and recoupment.

ALABAMA STRUCTURE



Local attorney and
county-based
indigent defense
system

Each judicial circuit has a five-person advisory board that is responsible for making decisions about the delivery of services in that circuit. Each board is composed of: the presiding circuit court judge; the president of the local circuit bar association; and three lawyers selected by the circuit bar association commission (in multi-county circuits these appointments are made by the president of local county bar associations). Advisory boards must reflect the racial and gender diversity of the circuit.

A state Indigent Defense Review Panel hears appeals of any disagreement between a local advisory board and the director of OIDS about local service delivery. The panel is a five-member body composed of appointments made by: the president of the Alabama State Bar (two appointees); the state's Association of Circuit Court Judges (one appointee); the Association of District Court Judges (one); and the president of the Alabama Lawyers Association (the state's African-American Bar). Appeals to the review board by OIDS may be either standards-based or based on fiscal concerns. The decision of the review board is final.

How the right to counsel is funded

Percentage of state funding: 54%

Percentage of local funding: 0%

Percentage of alternative funding: 46% – civil filing fees

Counties do not contribute to the funding of indigent defense services. Instead, money from a filing fee in civil court matters is collected in a central fund dedicated to indigent defense services. If the Office of Indigent Defense Services (OIDS) funding needs exceed the amount of dollars available in that fund, the state is statutorily responsible for funding the difference out of the state general fund.

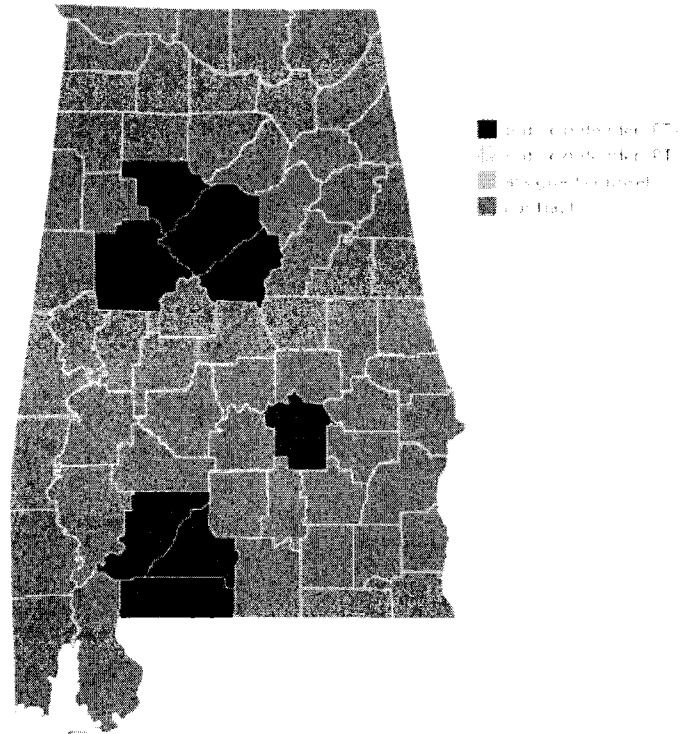
The methods used to provide public counsel

Local indigent advisory boards within each judicial circuit make decisions regarding the structure of local right to counsel services.

Because the state Office of Indigent Defense Services (OIDS) is ultimately responsible for all contracting, payment of assigned counsel, and oversight of staff public defenders, the director of OIDS has an important say over the decisions of the local advisory boards. First, if a local advisory board fails to recommend a delivery service

model at all, then the OIDS director determines how to provide services in that county. If the OIDS director disagrees with the recommendation of the local advisory board, the director can appeal the recommendation to a state Indigent Defense Review Panel.

ALABAMA TRIAL LEVEL SERVICES



Legal authority

Source of data: original research conducted by Sixth Amendment Center staff.

Arkansas



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Read about a particular aspect of the right to counsel in Arkansas by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Arkansas, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes

Branch of government: executive

The Arkansas **Public Defender Commission** (APDC) is an executive branch agency. APDC is composed of seven members, all appointed by the Governor. Commissioners are appointed to five-year terms. Four commissioners must be attorneys, one must be a county judge, and one a district judge.

APDC has ultimate statutory authority to set standards and policies related to the delivery of indigent defense services, including standards for the qualifications, training, and performance of attorneys.

ARKANSAS STRUCTURE

Governor

Public Defender Commission

Executive Director

District 1 Defender Office

Cross, Lee, Monroe,
Philips, St. Francis,
and Woodruff counties

The Commission has a central office that houses a conflict capital office, appellate services, and a training unit.

How the right to counsel is funded

Percentage of state funding: 100%

Percentage of local funding: negligible – counties provide office space and utilities

Percentage of alternative funding: 0%

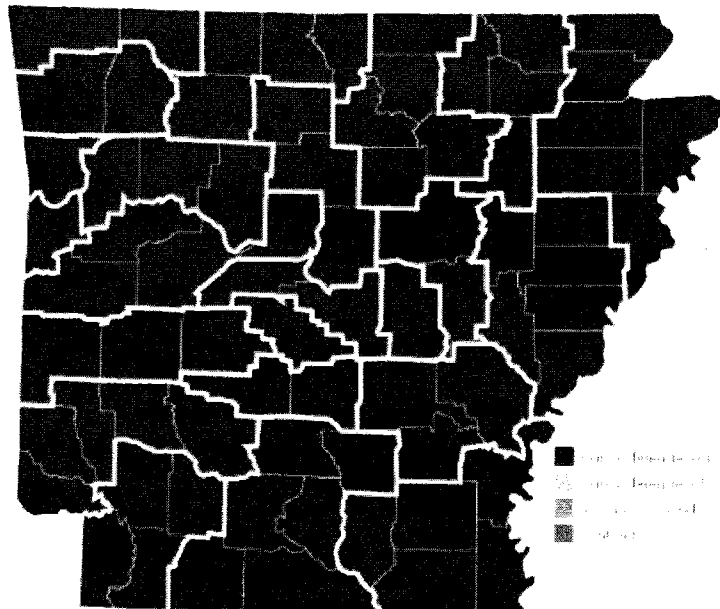
In **State v. Independence County**, 312 Ark. 472, 850 S.W.2d 842 (Ark. 1993), the Arkansas Supreme Court decided that the state is responsible for the funding of indigent defense services. However counties are responsible for some limited physical plant costs including utilities and telecommunications for public defender offices. Additionally, counties and municipalities can – if they so desire – contribute to an office to increase staff and augment state funding (though only the city of Little Rock has chosen to do so).

The methods used to provide public counsel

The state level Arkansas Public Defender Commission (APDC) determines how best to deliver services throughout the state.

For the most part, APDC delivers indigent defense services through staffed public defender offices in each of the state's 23 judicial circuits (covering 75 counties), although they have determined that certain circuits require two or more offices. For example, Arkansas' second judicial circuit is composed of six counties. Rather than have a single office, the commission authorized one office to serve four counties (Clay, Craighead, Greene, and Poinsett), a second office to serve Crittenden County, and a third to serve Mississippi County.

ARKANSAS TRIAL-LEVEL SERVICES



For conflicts, APDS primarily contracts with private attorneys. In certain urban areas of the state, however, the commission has determined that enough conflicts exist to support conflict public defender offices. For example, the Northwest Conflict Office serves as a regional conflict office for two counties (Madison and Washington counties), while another conflict office in Little Rock serves Pulaski County.

Legal authority

Arkansas Constitution, [art. 2, § 10](#)

Arkansas Code, [§§ 16-87-201 through 16-87-218](#) (public defender commission) and [§§ 16-87-301 through 16-87-307](#) (funding)

Source of data: original research conducted by Sixth Amendment Center staff.

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Florida



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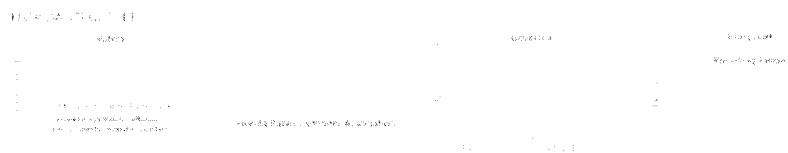
Read about a particular aspect of the right to counsel in Florida by clicking on the heading for that issue. Or **[\[Expand All\]](#)** to see and print from one location all of the facts about the right to counsel in Florida, then **[\[Collapse All\]](#)** whenever you need to do so.

How the right to counsel is administered and structured

State commission: none

Branch of government: executive

Florida's 67 counties are divided into 20 judicial circuits, and in each of these judicial circuits, a chief public defender is popularly elected to ensure independence from the judiciary and other governmental agencies. Chief defenders are elected every four years.



The **[Florida Public Defender Association, Inc. \(FPDA\)](#)** is a private, non-profit entity created in the early 1970s to bring a more unified voice to the **[20 independent elected circuit public defenders](#)**. Its executive director is selected by vote of the elected circuit defenders. FPDA provides training, lobbying, and other technical assistance services where cost efficiencies can be had through centralized services among the distinct offices. FPDA also disseminates state funding to each of the circuit defender offices.

It may be tempting to think of the FPDA executive director as analogous to a statewide chief public defender in another state, but that would be incorrect. The FPDA executive director carries out policies as determined by the elected circuit public defenders. And, because FPDA is a not statutorily required to exist, the elected circuit defenders are not required to participate in the Association. The 20 circuit defenders are ultimately solely responsible to the constituencies that elect them.

Statewide, Florida operates five **Regional Counsel offices** to handle trial conflicts and appeals, one in each appellate district, and three **Capital Collateral Regional Counsel offices**, one each serving the northern, central, and southern regions of the state.

How the right to counsel is funded

Percentage of state funding: 100%

Percentage of local funding: negligible – counties provide office space and information technologies

Percentage of alternative funding: 0%

The right to counsel in Florida is considered state-funded, with some exceptions. Counties, for example, are required to provide office space and informational technology services for the 20 circuit public defenders. In addition, a few counties and municipalities pay the circuit public defender offices to provide representation in non-state misdemeanor cases. Counties are also not prohibited from contributing resources to circuits for special projects, for example, creating specialized units for early appointment of counsel or providing attorneys for county-based specialty courts such as a mental health court.

The methods used to provide public counsel

Public defender offices staffed with full-time employees provide primary representation to indigent defendants in each of the state's 20 judicial circuits (covering 67 counties), with each office overseen by a popularly elected chief public defender.

When a circuit public defender has a conflict – for example when there are multiple co-defendants or in instances of case overload – secondary representation is provided by five **regional conflict defender offices** covering each of the state's five appellate jurisdictions, which are likewise staffed by full-time employees (although the chief conflict attorney is not popularly elected).

Tertiary representation is provided by private attorneys paid on an hourly basis or under contract to the judiciary.

Legal authority

Florida Constitution, **art. 1, § 16**

Florida Statutes, [§§ 27.40 through 27.61](#) (public defenders and other court-appointed counsel), and [§§ 27.7001 through 27.715](#) (capital collateral representation)

Source of data: original research conducted by Sixth Amendment Center staff.

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- Georgia consent decree requires competent counsel for children and adults
- Posted on: April 28, 2015

Georgia



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How the right to counsel is administered and structured

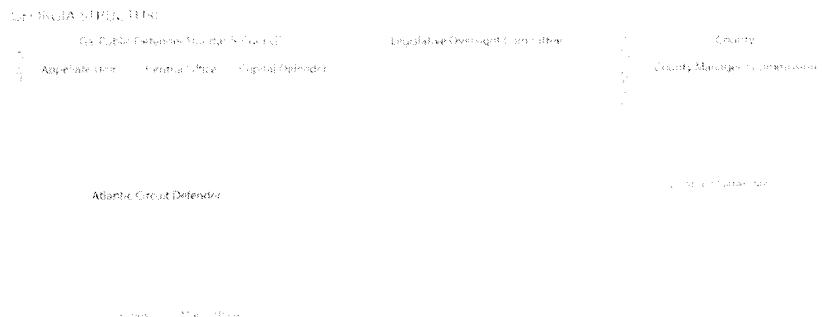
State commission: yes – limited authority

Branch of government: executive

The Georgia Public Defender Council (GPDC) is a fifteen-member commission within the executive branch. The executive branch of government has the majority of appointments to GPDC, but there is also an eight-member legislative oversight committee that reviews the council's work.

The council appoints circuit public defenders to oversee trial-level indigent defense services in 49 of the state's judicial circuits, but counties can opt out of the system, meaning the state has no regulatory authority over those regions. Because of this, GPDC is defined as having limited authority.

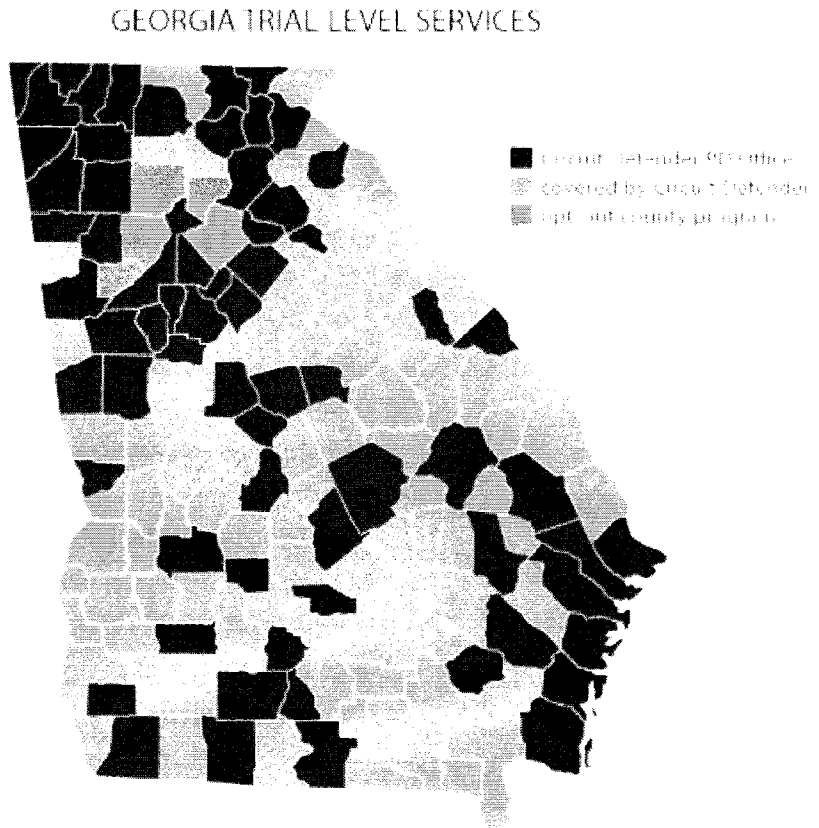
GPDC also oversees a central office that provides training, capital support services, appellate representation, and mental health advocacy. GPDC has limited authority to enforce the standards it promulgates.



How the right to counsel is funded

Percentage of state funding: 37%
Percentage of local funding: 63%
Percentage of alternative funding: 0%

The methods used to provide public counsel



Legal authority

Georgia Constitution, [art. 1, § 1, ¶ XIV](#)

Georgia Code, [§§ 17-12-1 through 17-12-128](#)

Source of data: original research conducted by Sixth Amendment Center staff, augmented by the American Bar Association, [State, County and Local Expenditures for Indigent Defense Services: Fiscal Year 2008](#), November 2010.

Kentucky



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How the right to counsel is administered and structured

State commission: yes

Branch of government: executive

The Kentucky **[Department of Public Advocacy](#)** (DPA) is a statewide, state-funded agency in the executive branch. DPA is overseen by an independent 12-member Public Advocacy Commission appointed by diverse authorities: Governor (7 appointments: 3 lawyers recommended by Kentucky Bar Association; one child advocate; 1 recommended by DPA's Protection & Advocacy Division; and 2 others); Kentucky Supreme Court (2 appointments); dean of each law school in Kentucky (3 appointments total). The Commission appoints the state public advocate who, in turn, is responsible for executing the Commission's policy directives including the proper administration of right to counsel services across the state.

Jefferson County's indigent defense system — the **[Louisville – Jefferson County Public Defender Corporation](#)** — operates outside of, but in cooperation with, the statewide system. Having been in existence long before the creation of the Department of Public Advocacy, Jefferson County opted to retain its existing system, rather than join the state system. Jefferson County must nonetheless comply with DPA standards in providing the right to counsel.

KENTUCKY STRUCTURE

Public Advocacy Commission

Department of Public Advocacy

Post-Trial Services
Division

Trial Services
Division

Protection & Advocacy
Division

LaGrange Branch
Defender Office

Franklin Branch

How the right to counsel is funded

Percentage of state funding: 95%

Percentage of local funding: 5%

Percentage of alternative funding: 0%

Funding for the Jefferson County system comes from a combination of county and state dollars. The state fully funds the right to counsel in all other counties.

The methods used to provide public counsel

The Kentucky Department of Public Advocacy (DPA) oversees 32 branch offices. The chief attorneys are responsible for direct client representation by full-time public defender staff and by local panels of private attorneys handling individual case assignments in conflict matters.

In Jefferson County, the nonprofit public defender office, Louisville-Jefferson County Public Defender Corporation, provides direct representation in all right to counsel matters in the county's criminal and juvenile courts. The Louisville nonprofit also subcontracts with private counsel to represent clients in cases of conflict.

KENTUCKY TRIAL-LEVEL SERVICES



Legal authority

Kentucky Constitution, [§ 11](#)

Kentucky Revised Statutes, [§§ 31.010 through 31.241](#)

Source of data: original research conducted by Sixth Amendment Center staff, augmented by the Department of Public Advocacy, [Fiscal Year 2013 Annual Litigation Report](#), September 2013.

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Louisiana



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How the right to counsel is administered and structured

State commission: yes

Branch of government: executive

The Louisiana Public Defender Board (LPDB) is an eleven-member commission housed in the executive branch that is statutorily required to promulgate indigent defense standards. LPDB members are appointed by diverse authorities: Governor (5 – one representing each appellate court district); Chief Justice (4 – one juvenile justice expert; one retired judge; two members at large); Senate President (1); and Speaker of the House(1).

Statutes make clear that LPDB must promulgate standards related to, among others, reasonable caseloads, attorney qualifications, training, and performance. LPDB appoints a State Public Defender who oversees a central office providing statewide training.

LOUISIANA STRUCTURE

Louisiana Public Defender Board

Executive Director

District 7 Defender

Catahoula and
Concordia parishes

How the right to counsel is funded

Percentage of state funding: 33%

Percentage of local funding: negligible – New Orleans augments state funding

Percentage of alternative funding: 67% – criminal fines and fees

Louisiana stands alone in the nation as the only jurisdiction with a statewide indigent defense system that relies to a large extent on locally generated non-governmental funding for the right to counsel. The majority of funding for trial-level services comes from a combination of fines and fees (e.g., bail bond revenue, criminal bond fees, revenue from forfeitures, and indigency screening fees, among others). The single greatest of these revenue generators for indigent defense in Louisiana is a special court cost (\$45) assessed against every criminal defendant who is convicted after trial, pleads guilty or no contest, or who forfeits his or her bond for violation of a state statute or a local ordinance other than a parking ticket. The result of this funding scheme is that a significant part of funding for trial-level representation in Louisiana comes from fees assessed on traffic tickets. The City of New Orleans augments state funding with limited local funding.

The methods used to provide public counsel

Louisiana's trial-level right to counsel services are delivered with some local autonomy. Louisiana has 42 judicial districts covering its 64 parishes (the equivalent of counties in other states). Prior to the creation of the Louisiana Public Defender Board (LPDB) in 2007, each district had a "chief defender" of the district, and those existing chiefs were grandfathered in under the 2007 statute, allowing them to continue to determine how best to deliver services in their district (assigned counsel, contract defender, staffed public defender offices, or a combination). The legislative reform of 2007 created LPDB ombudsmen who are required to evaluate services in each district on a regular basis. If services are found to be deficient, LPDB is authorized to provide services under any model the Board sees fit, including regionalizing the provision of services.

The LPDB central office contracts with non-profit public defender agencies for appellate services and capital conflict representation.

Legal authority

Louisiana Constitution, art. 1, § 13

Louisiana Revised Statutes, §§ ~~15:141~~ through 15:183 (public defender act), and §§ ~~15:185.1~~ through 15:185.9 (indigent parents in child abuse and neglect cases), and §§ ~~15:186.1~~ through 15:186.6 (indigent children in custody)

Source of data: original research conducted by Sixth Amendment Center staff, augmented by the Louisiana Public Defender Board. 2013 Annual Board Report.

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Mississippi



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How the right to counsel is administered and structured

State commission: none

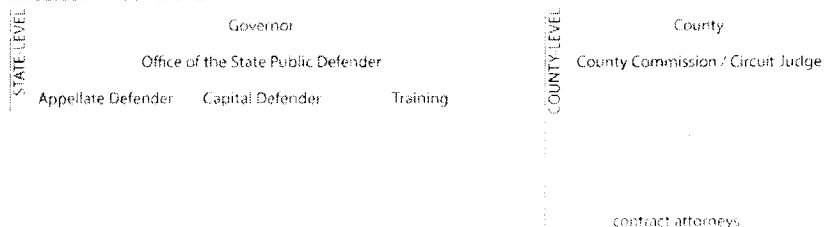
Branch of government: executive

Local government must shoulder the entire burden of providing public attorneys to the accused, other than for appeals and some portion of death penalty cases.

In 2011, the state legislature took initial steps toward state oversight of indigent defense services by establishing the Mississippi **Office of State Public Defender** (OSPD) in the executive branch of government. The legislature also mandated that this new office examine the delivery of trial-level indigent defense services across the state. Specifically, the OSPD is to "coordinate the collection and dissemination of statistical data" and to "develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force." OSPD combined the previously existing state Office of Indigent Appeals and the Office of Capital Defense Counsel into one administrative unit within OSPD.

A separate state agency, the Office of Capital Post-Conviction Counsel, continues to exist outside of OSPD's purview

MISSISSIPPI STRUCTURE



How the right to counsel is funded

Percentage of state funding: 29%

Percentage of local funding: 71%

Percentage of alternative funding: 0%

Unlike many states where municipal courts only hear local ordinance violations, Mississippi's 246 municipal courts adjudicate misdemeanors and hold preliminary hearings on felonies. This makes cities and towns a primary funder of right to counsel services. Local governments, however, have significant revenue-raising restrictions placed on them by the state while being statutorily prohibited from deficit spending. There are three revenue sources available to local government: real estate taxes; fees for permits/services; and assessments on ordinance violations, traffic infractions and criminal convictions. But, because the state of Mississippi's low tax burden, local governments must rely more heavily on unpredictable revenue streams, such as court fees and assessments, to pay for their criminal justice priorities. It comes as no surprise then that there is wide inconsistency on indigent defense spending per-capita across the state.

The methods used to provide public counsel

Contract defender services are the predominant delivery model in Mississippi (29.27%, or 24 of 82 counties). Attorneys working under fixed rate contracts are generally not reimbursed for overhead or for out-of-pocket case expenses, such as mileage, experts, or investigators. In short, the more work an attorney does on a case, the less money that attorney would make, giving attorneys a clear financial incentive to do as little work on their cases as possible.

For death penalty cases, the Office of Capital Defense Counsel, within the Mississippi Office of State Public Defender (OSPD), provides a trial attorney for indigent defendants when requested to do so by a county.

The Office of Indigent Appeals, within the Mississippi Office of State Public Defender (OSPD), handles appeals statewide for indigent clients.

The Office of Capital Post-Conviction Counsel represents indigent individuals on Mississippi's death row in state post-conviction proceedings.

Legal authority

Mississippi Constitution, [art. 3, § 26](#)

Mississippi Code Annotated, [§§ 25-32-1 through 25-32-71](#) (public defenders), and [§§ 99-15-15 through 99-15-21](#) (appointment and compensation of counsel)

Mississippi Rules of Criminal Procedure, [rule 7](#)

Source of data: original research conducted by Sixth Amendment Center staff.

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- **Last Week Tonight**
tackles indigent
defense crisis

Posted on: September
14, 2015

- **US DOJ**
investigating St.
Louis family courts
- **Missouri Bar**
weighs in on
workload crisis as
the legislature
debates privatizing
much of the public
defender's work

Posted on: February 6,
2013

Missouri



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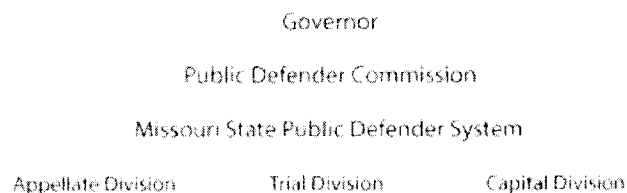
How the right to counsel is administered and structured

State commission: yes

Branch of government: judicial

Missouri statutes place oversight of the right to counsel with the seven-member **Public Defender Commission**. All seven members are appointed by the governor with advice and consent of the Senate.

MISSOURI STRUCTURE



District 11
Public Defender Office

How the right to counsel is funded

Percentage of state funding: 100%

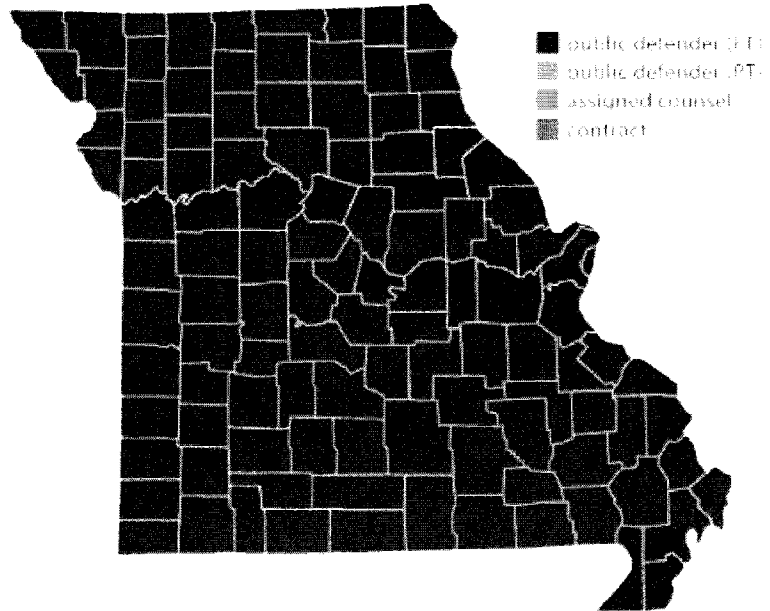
Percentage of local funding: 0%

Percentage of alternative funding: 0%

The methods used to provide public counsel

The **Missouri State Public Defender** (MSPD) has 33 trial-level public defender offices providing services to adult and juvenile clients in 45 judicial circuits covering the state's 115 counties. Unlike most other state public defender systems that have a separate system for conflict representation, the Missouri public defender system assigns a neighboring public defender office to provide representation in multiple defendant and other conflict cases. Missouri uses assigned counsel or contract defenders in less than 2% of all cases.

MISSOURI TRIAL-LEVEL SERVICES



Legal authority

Missouri Constitution, [art. 1, § 18\(a\)](#)

Missouri Revised Statutes, [§§ 600.011 through 600.101](#) (public defenders)

Source of data: original research conducted by Sixth Amendment Center staff.

North Carolina



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in North Carolina by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in North Carolina, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes – limited authority

Branch of government: judicial

The North Carolina **Office of Indigent Defense Services** (IDS) is a judicial branch agency that oversees the provision of right to counsel services throughout the state. An independent 13-member **Indigent Defense Services Commission** governs IDS and has authority to promulgate standards related to training, attorney qualifications, and attorney performance, among others. The commission is appointed by diverse authorities: Chief Justice (1 appointee, current or retired judge); Governor (1 – non-attorney); President Pro Tempore of the Senate (1 attorney); Speaker of the House of Representatives (1 attorney); North Carolina Public Defenders Association (1 attorney); North Carolina State Bar (1 attorney); North Carolina Bar Association (1 attorney); North Carolina Academy of Trial Lawyers (1 attorney); North Carolina Association of Black Lawyers (1 attorney); North Carolina Association of Women Lawyers (1 attorney); and the Commission itself (3, one non-attorney, one judge, and one Native American).

IDS does not have authority to decide the service delivery methods that will be used in each district, and so the commission is classified as having limited authority. The authority to determine the delivery model used in each judicial district is a legislative decision with input from local actors (county bars, judiciary, etc.). In those districts that have established a public defender office, the presiding judge of the Superior Court in that district has the authority to hire the chief public defender.

NORTH CAROLINA STRUCTURE

IDS Commission

Office of Indigent Defense Services

Appellate Defender

Juvenile Defender

Capital Defender

District 15B
Orange & Chatham Counties

District Defender Office

How the right to counsel is funded

Percentage of state funding: 100%

Percentage of local funding: 0%

Percentage of alternative funding: 0%

The methods used to provide public counsel

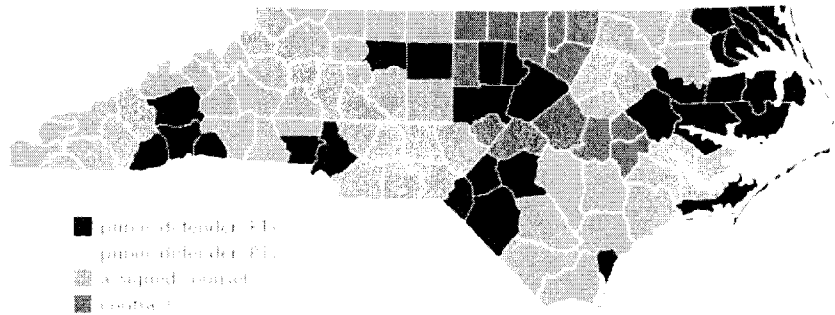
The North Carolina Office of Indigent Defense Services (IDS) provides trial-level representation using staff public defenders, assigned counsel, and contract defenders throughout the state. But, the authority to determine the **delivery model used in each judicial district** is a legislative decision with input from local actors (county bars, judiciary, etc.).

To date, only 16 judicial districts have established **public defender offices**. The presiding judge of the Superior Court in each district has the authority to hire the chief public defender for that district.

In 2011, the state legislature directed IDS to begin moving away from assigned counsel representation to contract representation, and, as of the summer of 2014, 18 counties provide services through contracts.

IDS also houses centralized statewide representation units: appellate defender, office of parent representation, capital defender, and the juvenile defender.

NORTH CAROLINA TRIAL-LEVEL SERVICES



Legal authority

North Carolina Constitution, [art. I, § 23](#)

North Carolina General Statutes, [§§ 7A-498.1 through 7A-499](#)

Source of data: original research conducted by Sixth Amendment Center staff augmented by the North Carolina Commission on Indigent Defense Services, [Report to the General Assembly](#), March 2014

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Oklahoma



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in Oklahoma by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Oklahoma, then **[Collapse All]** whenever you need to do so.

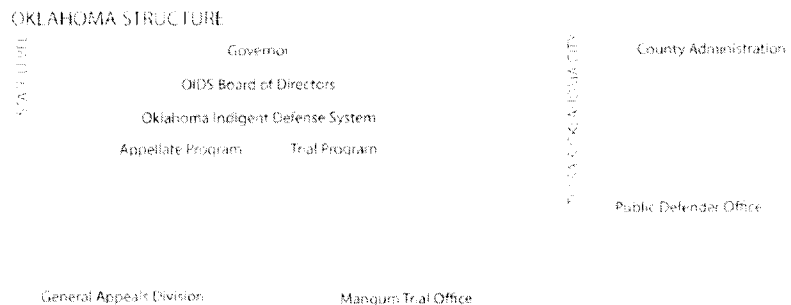
How the right to counsel is administered and structured

State commission: yes – limited authority

Branch of government: executive

Oklahoma has a 5-person **Board of Directors** appointed by the governor with advice and consent of the Senate. The board oversees the executive branch **Oklahoma Indigent Defense System** (OIDS). OIDS is responsible for providing trial-level, appellate, and post-conviction criminal defense representation to the indigent accused in 75 of the state's 77 counties.

Both Tulsa County (Tulsa) and Oklahoma County (Oklahoma City) operate right to counsel systems outside of the OIDS state system, through the **Tulsa County Public Defenders** and the **Oklahoma County Public Defender** respectively.



How the right to counsel is funded

Percentage of state funding: 68%

Percentage of local funding: 32%

Percentage of alternative funding: 0%

The methods used to provide public counsel

Both Tulsa County (Tulsa) and Oklahoma County (Oklahoma City) established public defender offices prior to the creation of the Oklahoma Indigent Defense System. Those two counties continue to provide services outside of the statewide system, through the **Tulsa County Public Defenders** and the **Oklahoma County Public Defender** respectively.

The Oklahoma Indigent Defense System (OIDS) provides **all right to counsel services outside of Tulsa and Oklahoma counties**. Non-capital trial services are provided by staff public defenders operating out of one of four offices (Clinton, Mangum, Norman, and Sapulpa), collectively serving 16 counties. Capital trial services are provided by staff public defenders in either the Norman or the Tulsa offices. Private attorneys under contract to OIDS provide services in conflict cases.

Legal authority

Oklahoma Constitution, **art. II, § 20**

Oklahoma Statutes, **tit. 19, §§ 138.1a through 138.10** (county public defender office in Oklahoma and Tulsa counties), and **tit. 22, §§ 1355 through 1370.1** (state indigent defense act)

Source of data: original research conducted by Sixth Amendment Center staff, augmented by Oklahoma County Annual Budget 2013-2014, Tulsa County Annual Budget 2013-2014, and budget information from the OIDS website.

South Carolina



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in South Carolina by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in South Carolina, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes – limited authority

Branch of government: executive

The **South Carolina Commission on Indigent Defense** is a statewide body of the executive branch charged with overseeing the state's delivery of indigent defense services. The commission has thirteen members. The governor appoints nine members: five appointments are based on the recommendations of the South Carolina Bar Association; and four are based on recommendations of the South Carolina Public Defender Association that must reflect geographic diversity from the state's four judicial regions. The chief justice of the South Carolina Supreme Court makes two appointments: one must be a retired circuit court judge, and one must be a retired judge with either family court or appellate experience. The Senate and House Judiciary chairs each appoint one person from their respective committees.

The commission has the authority to promulgate standards regarding the provision of indigent defense services, including among others, attorney qualifications, performance, workload, training, data collection, attorney compensation, and indigency determinations.

The commission also oversees the state's **Office of Indigent Defense** (OID). OID, through its central office: (1) provides day-to-day management of the statewide system; (2) processes and pays vouchers submitted by appointed counsel; (3) operates a statewide Appellate Division; and (4) maintains a Capital Trial Division.

SOUTH CAROLINA STRUCTURE

SC Commission on Indigent Defense

County Administration

SC Office of Indigent Defense

Appellate Defender

Circuit Public Defender Corporation

Public Defender Office

How the right to counsel is funded

Percentage of state funding: 50%

Percentage of local funding: 50%

Percentage of alternative funding: 0%

The methods used to provide public counsel

For primary representation at the trial level in criminal and juvenile delinquency cases, the South Carolina Commission on Indigent Defense employs **16 circuit public defenders**. Each circuit public defender is selected through a complex process that begins at the county bar level and is hired for a four-year term. The circuit defenders receive salary and benefits on parity with both the state's circuit judges and the state's 16 elected circuit prosecutors (called Solicitors in South Carolina). The circuit defenders have broad flexibility as to how they run their day-to-day operations within the parameters of commission policy and standards. Though the circuit defenders are state employees, the assistant public defenders are employees of one of the counties within their circuit.

In capital cases, the Office of Indigent Defense has a Capital Trial Division that typically provides one attorney to work with a local public defender in any death penalty case of an indigent defendant.

For conflict cases and for primary representation in other types of cases (family court abuse and neglect cases, termination of parental rights cases, other family court matters, and post conviction relief cases), private attorneys are appointed. The Office of Indigent Defense processes and pays their vouchers.

All appeals on behalf of the indigent are handled by the Appellate Division of the Office of Indigent Defense.

■ public ownership of land
 ■ public ownership of water
 ▨ privately owned land
 ▩ wetlands

Source of data: original research conducted by Sixth Amendment Center staff, augmented by information provided by the South Carolina Office of Indigent Defense.

- **DOJ recommendations for Shelby County, TN place financial burden on the county; Task Force would place responsibility on the state** Posted on: April 10, 2017
- **Tennessee undermines own values in providing counsel to the poor** Posted on: October 28, 2014
- **Redefining the right to counsel in Tennessee** Posted on: October 28, 2014
- **DOJ announces an agreement with Shelby County, Tennessee (Memphis) to reform juvenile justice system** Posted on: December 18, 2012

Tennessee



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in Tennessee by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Tennessee, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes – limited authority

Branch of government: judicial

The heads of the district defender offices in 30 of Tennessee's 31 judicial districts (encompassing 95 counties) are popularly elected. These chief defenders are all elected for eight-year terms, except the chief public defender in Davidson County (Nashville) who is elected every four years. The chief defender in Shelby County (Memphis) is appointed by the county mayor.

The 31 district defenders cast a simple majority vote to elect the executive director of the Tennessee District Public Defender Conference (TDPDC) to a four-year term. TDPDC is an umbrella organization that carries out the policies determined by the district public defenders, coordinates training, and disseminates state funding to each of the 31 districts. To facilitate more efficient decision-making, the 31 district defenders annually elect by majority vote an executive committee that guides the day-to-day operations of the conference.

TENNESSEE STRUCTURE

District Public Defender Conference

Administrative Office of Courts

11th District Defender

Budley, McMinn,
Monroe, and
Polk counties

Davidson County Metro Defender

Shelby County Public Defender

Private Conflict Counsel Panel

The trial courts manage the appointment and compensation of private attorneys when they are appointed in conflict and case

overflow situations, and the state Administrative Office of the Courts pays them.

The Tennessee **Office of the Post-Conviction Defender** (OPCD) is a state agency in the judicial branch that represents death row inmates in state collateral proceedings. The agency also provides training and assistance to district defenders on death penalty cases. A nine-member Oversight Commission oversees the OPCD, and appointments to the commission are made by diverse authorities: Governor (2); Lieutenant Governor (2); Speaker of the House (2); and Supreme Court (3).

How the right to counsel is funded

Percentage of state funding: 89%

Percentage of local funding: 11% – Davidson, Knox, and Shelby counties only

Percentage of alternative funding: 0%

State funding for right to council services is disseminated to the districts through the Tennessee District Public Defender Conference (TDPDC).

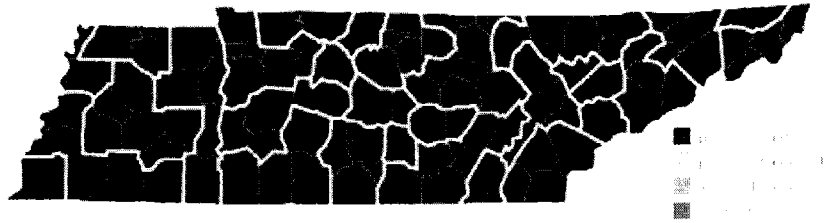
The public defender offices in Shelby and Davidson counties both existed prior to the creation of the TDPDC, and the counties contribute a significant amount of funding to the operations of their respective offices. State funding for the public defender offices in Shelby and Davison counties is statutorily required to increase at the same percentage rate as the state funding increases to other districts.

The State of Tennessee funds prosecutors (called “district attorney generals”) throughout the state. Local jurisdictions may augment that state prosecution funding if they so choose, however Tennessee statutes require that any “increase in local funding for positions or office expense for the district attorney general shall be accompanied by an increase in funding of seventy-five percent (75%) of the increase in funding to the office of the public defender in such district for the purpose of indigent criminal defense.” Knox County (Knoxville) is one of the few jurisdictions that augments its state funding through the “75% rule.” More than a quarter of the budget of the Knox County Community Law Office is local funding.

The methods used to provide public counsel

Each of Tennessee's **31 judicial districts** has a public defender office. Rules of the Tennessee Supreme Court require that the district public defender be appointed unless there is a conflict of interest or excessive workload.

TENNESSEE TRIAL LEVEL SERVICES



In cases of conflict or excessive workload, the Tennessee Supreme Court Rules provide for the qualifications, appointment, and compensation of private attorneys to provide right to counsel services. Each trial court maintains a list of attorneys to be appointed. Although extensive qualifications are required for lead and co-counsel in capital cases, there are no qualification requirements for the attorneys appointed to represent indigent defendants in non-capital cases. In short, discretion is left to the local courts about which lawyers are or are not qualified.

Appointed private attorneys can bill the court \$40 per hour for out-of-court case preparation and \$50 per hour for in-court work, though total compensation cannot exceed pre-set limits (e.g., the maximum an attorney can bill for a juvenile delinquency case is \$1,000). The local judge is responsible for approving case-related expenses and for approving the voucher, and state Administrative Office of Courts (AOC) pays the attorney out of state funds.

The Tennessee Office of the Post-Conviction Defender, a state agency, represents all indigent death row inmates in state collateral proceedings.

Legal authority

Tennessee Constitution, **art. I, § 9**

Tennessee Code Annotated, **§§ 8-14-101 through 8-14-401** (district public defenders and conference), and **§ 16-2-518** (75% rule), and **§§ 40-30-201 through 40-30-210** (post-conviction)

Tennessee Supreme Court Rules, **Rule 13** (qualifications, appointment, and compensation of attorneys)

Source of data: original research conducted by Sixth Amendment Center staff.

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- **Williamson County TX settles “no counsel court” lawsuit** Posted on: January 24, 2013
- **New reports promote public defender model for Texas** Posted on: October 25, 2012
- **Are public defenders better than appointed counsel? DOJ says “yes”** Posted on: October 25, 2012

Texas



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in Texas by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Texas, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes – limited authority

Branch of government: judicial

Texas' 254 counties are responsible for providing the right to counsel, with limited support from the state.

The state's limited involvement in the right to counsel is through the **[Texas Indigent Defense Commission \(TIDC\)](#)**. TIDC is a standing committee of the Texas Judicial Council – a statewide criminal justice coordinating body.

TIDC itself has a 13-member **[governing board](#)**. Eight members are ex officio members of the Judicial Council: the chief justice of the Supreme Court of Texas (the state court of last resort on civil matters); the presiding judge of the Court of Criminal Appeals (the state court of last resort on criminal matters); the chair of the House Criminal Jurisprudence Committee; two members of the Senate appointed by the lieutenant governor; one member of the House of Representatives appointed by the House speaker; one Court of Appeals justice appointed by the governor; and one county court judge also appointed by the governor. The governor appoints five additional members with the advice and consent of the Senate: one presiding district court judge; two county court judges or county commissioners (one of which must represent a county with a population greater than 250,000); one practicing criminal defense attorney; and one chief public defender.

TIDC is authorized to set standards and policies related to, among others, attorney performance, attorney qualifications, training,

caseload controls, indigency determinations, contracting, and attorney compensation. TIDC serves as a clearinghouse for Texas indigent defense data and provides technical assistance to counties.

In 2010, the state created the **Office of Capital and Forensic Writs** to represent those under sentence of death in their state post-conviction habeas corpus and related proceedings.

TEXAS STRUCTURE

Texas Indigent Defense Commission

Jasper County

Commissioners' Court

Private Attorneys

How the right to counsel is funded

Percentage of state funding: 13%

Percentage of local funding: 87%

Percentage of alternative funding: 0%

Counties and cities are responsible, at the outset, for funding right to counsel services.

Limited state funding is distributed to counties through the Texas Indigent Defense Commission (TIDC) on an annual basis. Counties are required to submit an annual indigent defense plan to TIDC indicating how the county will meet TIDC standards, and in return TIDC disseminates state funding, calculated according to a formula to determine the amount each county receives, to offset the cost of providing right to counsel services. Importantly, TIDC also awards discretionary single- and multi-year grants to counties to fund innovative direct client services.

The methods used to provide public counsel

The vast majority of the **254 counties** in Texas rely on assigned counsel systems administered by the judiciary, in which private attorneys are paid either on an hourly rate or at a set rate per case.

Even in those counties with some form of public defender office, the choice remains with each trial judge as to whether to assign cases to the local office or appoint a private attorney. It is therefore quite possible for several or even all judges in a county to ignore the existence of a public defender office and to assign cases instead to private counsel under contract directly with the court.

More so than any other state, Texas has increasingly experimented with providing indigent defense services on a regional, multi-county basis, and often these regional defender systems are exclusive to certain types of cases. For example, the Lubbock Regional Capital Defender Office represents clients in death penalty cases in 94 counties scattered across the state. Similarly, Bee County has combined resources with neighboring Live Oak County and McMullen County to create a regional defender office to handle adult felonies and misdemeanors, while juvenile delinquency and mental health matters are still handled by the private attorney model so prevalent in the rest of the state.

The state Office of Capital and Forensic Writs represents people who have been sentenced to death in their state post-conviction habeas corpus and related proceedings.

For those incarcerated in the Texas Department of Criminal Justice (TDCJ), the TDCJ's own state office of **State Counsel for Offenders** represents them at the trial level of any offense allegedly committed while incarcerated in the TDCJ and also provides legal assistance in appeals, discretionary writs, civil commitment proceedings, and immigration status.

Legal authority

Texas Constitution, **art. 1, § 10**

Texas Administrative Code, tit. 1, **§§ 173.101 through 173.402** (indigent defense grants), and **§§ 174.1 through 174.28** (indigent defense policies and standards)

Texas Code of Criminal Procedure, **arts. 1.05 through 1.051** (right to counsel), and **arts. 26.04 through 26.06** (county appointment of counsel)

Texas Family Code, **§§ 51.10 through 54.102** (juvenile court)

Texas Government Code, **§§ 78.001 through 78.056** (capital writs committee and office), and

§§ 79.001 through 79.040 (indigent defense commission)

Source of data: original research conducted by Sixth Amendment Center staff, augmented by the Texas Indigent Defense Commission's FY 2013 Annual and Expenditure Report, January 2014, and other public materials on the TIDC website.

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Virginia



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Read about a particular aspect of the right to counsel in Virginia by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Virginia, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes

Branch of government: judicial

The Virginia Indigent Defense Commission (VIDC) is an independent body in the judicial branch that is responsible for delivery of right to counsel services across the state. The 14 commission members are appointed by diverse authorities: the chairmen of the House and Senate Committees for Courts of Justice each have an appointment; the chairman of the Virginia State Crime Commission; the executive secretary of the Supreme Court; the Virginia State Bar (two attorneys); Governor (2 appointees); the Speaker of the House of Delegates (3 appointees); and, the Senate Committee on Rules (3 appointees). The commission has authority to set standards and to enforce compliance against those standards through its central office in Richmond.

How the right to counsel is funded

Percentage of state funding: 100%

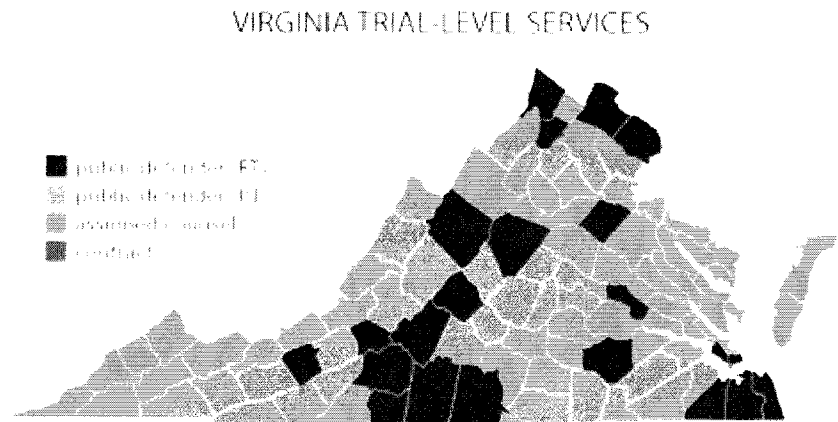
Percentage of local funding: 0%

Percentage of alternative funding: 0%

The methods used to provide public counsel

Where a local public defender office is established, the head of that office is selected by a temporarily constituted local hiring committee on which the executive director of the Virginia Indigent Defense Commission (VIDC) also sits. There are also four capital defender offices to provide representation to the indigent in death penalty cases.

Where there is no public defender office and to handle conflicts where there is such an office, the VIDC executive director administers a **statewide roster of private attorneys** who are qualified to handle right to counsel cases.



Legal authority

Alone among the states and territories, Virginia's Constitution does not expressly contain a right to counsel in criminal cases.

Virginia Code Annotated, **§§ 19.2-157 through 19.2-163.8**

Source of data: original research conducted by Sixth Amendment Center staff.

West Virginia



All data is current as of 2013, unless otherwise noted.

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Read about a particular aspect of the right to counsel in West Virginia by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in West Virginia, then **[Collapse All]** whenever you need to do so.

How the right to counsel is administered and structured

State commission: yes – limited authority

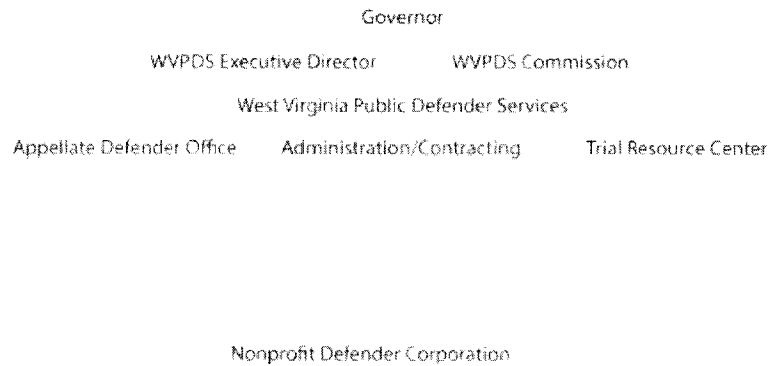
Branch of government: executive

West Virginia **[Public Defender Services](#)** (WVPDS) is an executive branch agency housed in the Department of Administration. The executive director of WVPDS is an at-will, direct gubernatorial appointee.

The WVPDS executive director chairs a 9-member commission that sets standards related to attorney qualifications, performance, and training. The governor appoints the other 8 members of the commission: one former or retired circuit judge; three experienced criminal defense lawyers (one from each of the state's Congressional districts); one sitting chief public defender; one non-lawyer; one mental health or developmental disability advocate; and one juvenile justice advocate.

WVPDS determines how right to counsel services are delivered in all of the state's 55 counties, oversees contracts with public defender corporations, pays the vouchers of private attorneys, and within statutory limits sets the compensation of attorneys and experts and investigators. It also oversees a trial-level resource center and an appellate defender office.

WEST VIRGINIA STRUCTURE



How the right to counsel is funded

Percentage of state funding: 100%

Percentage of local funding: 0%

Percentage of alternative funding: 0%

The state provides all funding of right to counsel services, administered through the West Virginia Public Defender Services (WVPDS).

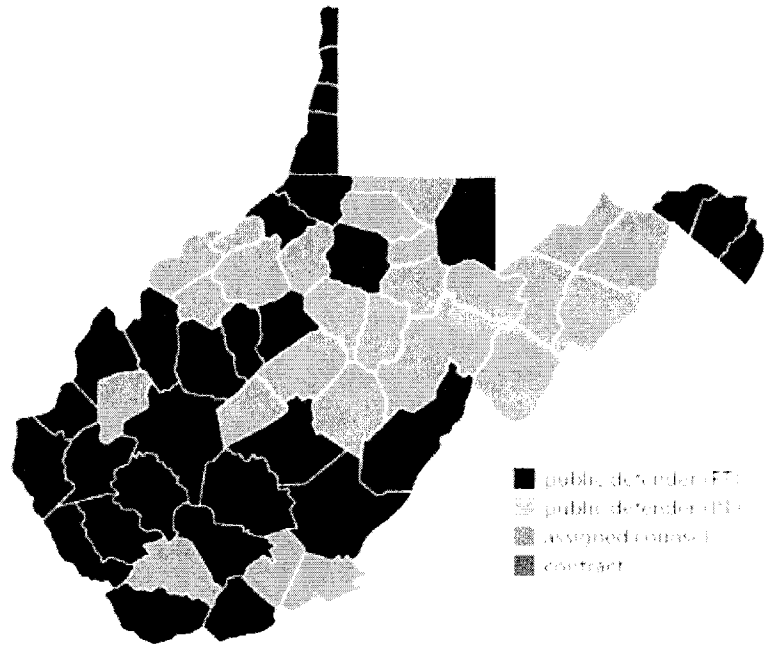
The methods used to provide public counsel

The West Virginia Public Defender Services (WVPDS) has total authority to decide how services are delivered in the state's 55 counties.

In 31 counties, WVPDS has established **public defender corporations** that operate like public defender offices elsewhere in the country. These are non-profit organizations that contract with WVPDS to provide right to counsel services. Each corporation has a board of directors that is appointed jointly by the governor, the county commission, and the local bar association. WVPDS hires and the chief of each public defender corporation. Additional counties are slated to open public defender corporations under a **strategic plan** currently being implemented.

Primary services in the 24 counties where WVPDS has not established a public defender corporation, and conflict services in all counties, are provided by private attorneys. The local judges choose and appoint the private attorneys to represent the indigent and approve vouchers to be paid by WVPDS. The private attorneys are paid \$65 per hour in court and \$45 per hour out of court, as established by statute.

WEST VIRGINIA TRIAL-LEVEL SERVICES



Legal authority

West Virginia Constitution, [art. 3, § 14](#)

West Virginia Code, [§§ 29-21-1 through 29-21-21](#)

Source of data: original research conducted by Sixth Amendment Center staff.

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Title 17 - Criminal Procedures

CHAPTER 3

Defense of Indigents

ARTICLE 1

General Provisions

SECTION 17-3-5. Definitions.

As used in this chapter, the term:

- (1) "Commission" means the Commission on Indigent Defense.
- (2) "Division of Appellate Defense" includes all attorneys and employees in the division.
- (3) "Assistant public defender" means an attorney who is employed by a circuit public defender office.
- (4) "Circuit public defender" means the head of a public defender office providing indigent defense representation within a given judicial circuit of this State.
- (5) "Circuit public defender office" means the office of one of the several circuit public defenders.
- (6) "Public defender" means an attorney who is employed in a circuit public defender office or who represents an indigent person pursuant to a contractual arrangement with a circuit public defender office.
- (7) "Administering county" means the county within each circuit with which the circuit public defender has an agreement for the administering of indigent defense funds distributed from the State and the counties within the circuit for the provision of indigent defense services within each circuit.
- (8) "Chief county public defender" means a public defender appointed by the circuit public defender to assist in managing, supervising, and providing indigent defense representation in one or more assigned counties within the circuit.

HISTORY: 2007 Act No. 108, Section 2, eff June 21, 2007.

SECTION 17-3-10. Persons entitled to counsel shall be so advised, when counsel shall be provided.

Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. The fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel.

HISTORY: 1962 Code Section 17-281; 1969 (56) 374, 1977 Act No. 98, Section 2.

SECTION 17-3-20. Appointment of counsel for indigents charged with murder, compensation.

In the event any person who shall be charged with murder shall, after investigation by the court, be determined to be unable financially to retain adequate legal counsel, the court shall appoint such qualified and experienced counsel to defend such defendant in the trial of the action.

Such appointed counsel shall be paid such fee and costs as the court shall deem appropriate.

HISTORY: 1962 Code Section 17-281.1; 1974 (58) 2361.

SECTION 17-3-30. Affidavit of inability to employ counsel; payment of indigent's assets to state, application fee, waiver or reduction of fee, disposition of fee revenues, fund for screening applicants.

(A) A person to whom counsel has been provided shall execute an affidavit that he is financially unable to employ counsel and that affidavit must set forth all his assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets to the general fund of the State.

(B) A forty dollar application fee for public defender services must be collected from every person who executes an affidavit that he is financially unable to employ counsel. The person may apply to the clerk of court or other appropriate official for a waiver or reduction in the application fee. If the clerk or other appropriate official determines that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge upon sentencing and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the state fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a monthly basis as well as reporting the amount of funds collected or waived.

(C) Sufficient funds shall be set aside from allocations provided for the defense of indigent to provide for adequate screening of applications for indigent assistance to ensure the applicant is qualified.

HISTORY: 1962 Code Section 17-282; 1969 (56) 374, 1977 Act No. 219 Pt II Section 19, 1988 Act No. 356, Section 1; 1993 Act No. 164, Part II, Section 45E; 1994 Act No. 497, Part I, E23-Section 14; 1995 Act No. 145, Part IB, E23-Section 14, 1996 Act No. 458, Part II, Section 26B; 1999 Act No. 100, Part II, Section 17, 2007 Act No. 108, Section 4, eff June 21, 2007.

SECTION 17-3-40. Creation of claim against assets and estate of person for whom counsel is provided.

(A) The appointment of counsel, as hereinbefore provided, creates a claim against the assets and estate of the person who is provided counsel in an amount equal to the costs of representation as determined pursuant to Sections 17-3-50 and 17-3-80, less that amount that the person pays to the defender corporation of the county or counties wherein he is being represented or the judicial department as provided for in Section 17-3-30.

(B) Such claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a

claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter

(C) The court may, in its discretion, order any claim or judgment waived, modified or withdrawn.

(D) The Judicial Department shall be responsible for administering this section, and all moneys collected hereunder shall be paid over to the Judicial Department.

HISTORY: 1962 Code Section 17-283; 1969 (56) 374; 1977 Act No. 219 Part II Section 19, 1988 Act No. 356, Section 2.

SECTION 17-3-45. Affidavit of assets of persons seeking appointed counsel; application fee; claim against assets and estate of person provided counsel.

(A) A person to whom counsel has been provided in any court in this State shall execute an affidavit that the person is financially unable to employ counsel and that affidavit shall set forth all of the person's assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets or a portion thereof to the Office of Indigent Defense.

(B) A forty dollar application fee for appointed counsel services must be collected from every person who executes an affidavit that they are financially unable to employ counsel. The person may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the Public Defender Application Fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a monthly basis as well as reporting the amount of funds collected or waived.

(C) In matters in which a juvenile is brought before a court, the parents or legal guardian of such juvenile shall execute the above affidavit based upon their financial status and shall be responsible for paying any fee. In juvenile matters, the parents or legal guardians of the juvenile, must be advised in writing of this requirement at the earliest stage of the proceedings against the juvenile.

(D) Nothing contained in this section restricts or hinders a court from appointing counsel in any emergency proceedings or where there is not sufficient time for an individual to complete the application process.

(E) The appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays either to the appointed counsel or defender corporation of the county or counties where he is represented or to the Office of Indigent Defense. The claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part

or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.

(F) The court may, in its discretion, order any claim or judgment waived, modified, or withdrawn.

HISTORY: 2008 Act No. 353, Section 2, Pt 231, eff July 1, 2009.

SECTION 17-3-50. Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.

(A) When private counsel is appointed pursuant to this chapter, he must be paid a reasonable fee to be determined on the basis of forty dollars an hour for time spent out of court and sixty dollars an hour for time spent in court. The same hourly rates apply in post-conviction proceedings. Compensation may not exceed three thousand five hundred dollars in a case in which one or more felonies is charged and one thousand dollars in a case in which only misdemeanors are charged. Compensation must be paid from funds available to the Office of Indigent Defense for the defense of indigents represented by court-appointed, private counsel. The same basis must be employed to determine the value of services provided by the office of the public defender for purposes of Section 17-3-40.

(B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.

(C) Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred.

(D) Nothing in this section shall be construed to alter the provisions of Section 17-3-10 concerning those defendants who are entitled to legal representation.

HISTORY: 1962 Code Section 17-284; 1969 (56) 374; 1993 Act No. 164, Part II, Section 45F; 2007 Act No. 108, Section 5, eff June 21, 2007.

SECTION 17-3-55. Carry-forward of unpaid obligations.

Notwithstanding any other provision of law, the Commission on Indigent Defense is authorized to carry forward unpaid obligations incurred and received for payment in one fiscal year and to pay, to the extent possible, these obligations from funds appropriated in the next year's budget.

HISTORY: 2008 Act No. 353, Section 2, Pt 231H, eff July 1, 2009.

SECTIONS 17-3-60, 17-3-70. Repealed by 2007 Act No. 108, Section 9, eff June 21, 2007.

Editor's Note

Former Section 17-3-60 was entitled "Procedures for establishing public defender systems in counties" and was derived from 1962 Code Section 17-285; 1969 (56) 374; 1977 Act No. 98 Section 1, 1998 Act

No. 279, Section 1.

Former Section 17-3-70 was entitled "Appropriation for maintenance of defender corporations and compensation of appointed private counsel" and was derived from 1962 Code Section 17-286, 1969 (56) 374, 1977 Act No. 219 Pt II Section 19.

SECTION 17-3-80. Appropriation for expenses of appointed private counsel and public defenders; restrictions and limitations.

In addition to the appropriation as provided by law, there is appropriated for the fiscal year commencing July 1, 1969, the sum of fifty thousand dollars for the establishment of the defense fund which must be administered by the Office of Indigent Defense. This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, not to exceed two thousand dollars for each case, actually incurred in the representation of persons pursuant to this chapter, so long as the expenses are approved by the trial judge. No reimbursement may be made for travel expenses except extraordinary travel expenses approved by the trial judge. The total state funds provided by this section may not exceed fifty thousand dollars.

HISTORY: 1962 Code Section 17-287; 1969 (56) 374; 1977 Act No. 219 Pt II Section 19; 1987 Act No. 142 Section 1; 1993 Act No. 164, Part II, Section 45G.

SECTION 17-3-85. Fiscal year-end disposition of unexpended appropriations for payment of private appointed counsel for counties without public defender corporations.

At the end of each fiscal year all funds appropriated for counties without public defender corporations which have not been exhausted shall be combined into one fund and any and all claims of private appointed counsel in other counties remaining unpaid by virtue of the exhaustion of appropriated funds in those respective counties shall be paid on a pro rata basis until such fund is exhausted or until all claims are satisfied. After payment of the above, any funds remaining at the end of a fiscal year maintained by the Judicial Department shall revert to the general fund of the State at the end of that fiscal year.

HISTORY: 1982 Act No. 466, Part II Section 43.

SECTION 17-3-90. Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment.

Private, appointed counsel shall submit a voucher to the Office of Indigent Defense setting forth all details of the appointment for purposes of remuneration pursuant to Section 17-3-50 and reimbursement of expenses pursuant to Section 17-3-80, and the public defender shall do likewise pursuant to Section 17-3-80. It is the duty of the Office of Indigent Defense to present the voucher to the trial judge for approval and to transmit the same to the Comptroller General for payment to the appropriate party.

HISTORY: 1962 Code Section 17-288; 1969 (56) 374; 1977 Act No. 219 Pt II Section 19; 2007 Act No. 108, Section 6, eff June 21, 2007.

SECTION 17-3-100. Discretionary authority of judge to appoint counsel is not limited; remuneration and reimbursement

Nothing herein contained is designed to limit the discretionary authority of a judge to appoint counsel in any case and any such counsel shall be entitled to remuneration and reimbursement as provided in Sections 17-3-50 and 17-3-80 hereof, so long as funds appropriated herein are available therefor.

HISTORY: 1962 Code Section 17-289; 1969 (56) 374.

SECTION 17-3-110. Power of Supreme Court to establish rules and regulations.

The Supreme Court of South Carolina is hereby empowered to establish such rules and regulations as are necessary for the proper administration of this chapter.

HISTORY: 1962 Code Section 17-290; 1969 (56) 374

ARTICLE 3

Commission on Indigent Defense

SECTION 17-3-300. Omitted by 2007 Act No. 108, Section 7, eff June 21, 2007.

Former Section 17-3-300 was entitled "Definitions" and was derived from 2005 Act No. 103, Section 2, eff July 1, 2005.

SECTION 17-3-310. Commission created; appointment of members; terms; powers and duties.

(A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows:

(1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. A person may not be appointed to the commission pursuant to the provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender.

(2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed.

(3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed.

(4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows:

(1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and

- (2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.
- (D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.
- (E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1)
- (F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.
- (G) The commission:
- (1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article;
 - (2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation;
 - (3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services;
 - (4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to:
 - (a) the preparation and distribution of a basic defense manual and other educational materials;
 - (b) the preparation and distribution of model forms and documents employed in indigent defense;
 - (c) the promotion of and assistance in the training of indigent defense attorneys;
 - (d) the provision of legal research assistance to public defenders; and
 - (e) the provision of other assistance to public defenders as may be authorized by law;
 - (5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State; and
 - (6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission.
 - (7) The commission shall establish and administer the rules and procedures for selection of members to

serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

HISTORY: 1993 Act No. 164, Part II, Section 45C; 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

SECTION 17-3-320. Office of Indigent Defense; executive director; appointment; duties.

(A) There is created the Office of Indigent Defense under the jurisdiction of the commission. The office must be administered by an executive director appointed by the commission. The executive director may hire other administrative, clerical, and legal staff and is authorized to contract with outside consultants on behalf of the office as he considers necessary to provide the services as required pursuant to the provisions of this article

(B) The executive director shall:

- (1) administer and coordinate the operations of the office and all divisions within the office and supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission;
- (2) maintain proper records of all financial transactions related to the operation of the office;
- (3) coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services;
- (4) prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require;
- (5) coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;
- (6) maintain proper records of all financial transactions related to the operation of the commission;
- (7) apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests;
- (8) provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter;
- (9) attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director;
- (10) ensure that the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources; and
- (11) perform other duties as the commission assigns.

HISTORY: 1993 Act No. 164, Part II, Section 45C; 2005 Act No. 103, Section 2, eff. July 1, 2005; 2007 Act No. 108, Section 7, eff. June 21, 2007.

SECTION 17-3-330. Duties of Office of Indigent Defense.

(A) The Office of Indigent Defense shall:

(1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes;

(2) perform those functions provided pursuant to Section 17-3-360;

(3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State;

(4) implement other duties the commission may direct; and

(5) report annually to the General Assembly on the indigent defense system.

(B) On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all outstanding obligations against the fund for payment of attorney fees and expenses in non-capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.

(C) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.

HISTORY: 1993 Act No. 164, Part II, Section 45C; 1994 Act No. 497, Part I, E23-Section 14; 1995 Act No. 145, Part IB, E23-Section 14; 1996 Act No. 458, Part II, Section 26C; 2005 Act No. 103, Section 2, eff. July 1, 2005; 2007 Act No. 108, Section 7, eff. June 21, 2007.

SECTION 17-3-340. Duties of commission.

(A) All members of the commission shall at all times act in the best interest of indigent defendants who are receiving legal representation pursuant to the provisions of this chapter.

(B) All members of the commission are entitled to vote on all matters before the commission unless otherwise provided by law or by rules adopted by the commission concerning conflicts of interest.

(C) Each member of the commission shall serve until a successor has been appointed. Removal of commission members is for cause and must be in accordance with policies and procedures adopted by the commission.

(D) Unless otherwise provided in this article, a quorum is a majority of the members of the commission who are currently serving in office, and decisions of the commission are determined by majority vote of

the members present, except that a majority of the entire commission must approve the appointment or removal of a circuit public defender or the executive director for cause.

(E) The commission shall meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties and shall keep and maintain minutes of all commission meetings.

(F) The commission shall elect such officers, other than the chairperson, from the members of the commission as it deems necessary and shall adopt rules for the transaction of its business as it desires. Elected officers shall serve for a term of one year and may be removed without cause by a vote of two-thirds of the members of the entire commission and for cause by a majority vote of the entire commission. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest.

(G) The members of the commission shall receive no compensation for their services but will be reimbursed for their actual expenses incurred in the performance of their duties as members of the commission. Expenses incurred by the commission must be paid from the general operating budget of the commission.

(H) The commission shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.

(I) The commission shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary or advisable to fulfill the purposes and provisions of this article in the delivery of indigent services. This includes, but is not limited to, standards for:

(1) maintaining and operating circuit public defender offices, including requirements regarding qualifications, training, and size of the legal and support staff of the offices and access to data and records, including business records, in each circuit public defender office;

(2) prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person;

(3) public defender and appointed counsel caseloads;

(4) the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel, based on job description, education, training, and experience;

(5) the performance of public defenders and appointed counsel representing indigent persons;

(6) procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment;

(7) providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons;

(8) determining indigence and for assessing and collecting the costs of legal representation and related services;

(9) compensation of attorneys appointed to represent indigent persons pursuant to this chapter;

(10) removing a circuit public defender for cause,

(11) a uniform definition of a "case" for purposes of determining caseload statistics; and

(12) accepting contractual indigent defense representation

HISTORY: 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

SECTION 17-3-350. Immunity.

The members of the commission and the Circuit Public Defender Selection Panel and other policy-making or administrative personnel acting in a policy-making or administrative capacity in connection with the commission or the panel are not subject to civil liability resulting from an act or failure to act in the implementation and carrying out of the purposes of this chapter.

HISTORY: 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

SECTION 17-3-360. Division of Appellate Defense created; administration and staffing, duties and responsibilities.

(A) There is created within the Office of Indigent Defense, the Division of Appellate Defense. All of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with the commission and Office of Appellate Defense formerly provided in Chapter 4, Title 17 are transferred to and incorporated in and must be administered as part of the Office of Indigent Defense.

(B) The division must be administered by a chief attorney. The staff of the division shall consist of additional attorneys and administrative, investigative, secretarial, and clerical employees necessary to discharge the duties of the division. No person may be hired to serve as an attorney who is not licensed to practice law in this State. Attorneys employed by the division shall devote full time to their duties and may not engage in the private practice of law.

(C) The division shall carry out the following duties and responsibilities:

(1) It shall represent a person who the office determines, subject to court review, falls within the guidelines promulgated pursuant to Section 17-3-310(G)(2) who files Notice of Intention to Appeal or desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility. A person desiring representation by the division shall request a determination of his indigency status in writing from the Supreme Court, the court of appeals, the circuit or family court, or the division. A court receiving a request for indigent appellate representation shall forward the request to the office who, within ten days of the receipt of the request for representation, shall notify the person requesting representation and the court in which the appeal will be effected of its decision.

(2) Upon a finding that a person requesting representation qualifies as an indigent and after being appointed as counsel for this person by the court in which the appeal will be effected, the division shall represent this person in his appeal of a conviction in a trial court, or decision of a proceeding in civil commitment or other involuntary placement in a state, county, or municipal facility, provided nothing in this article requires the division to pursue an appeal unless the chief attorney of the division is first

satisfied that there is arguable merit to the appeal.

(3) It shall represent indigents, other than at trial or commitment proceedings when appointed by the court.

(4) It shall represent indigents in appeals of convictions in trial courts of this State, or decisions of civil commitment proceedings or other involuntary placement only in courts of this State.

HISTORY: 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

SECTION 17-3-370. Appointment of counsel by court.

The provisions of this article shall not restrict a court in which an appeal is to be effected, from appointing counsel for indigent persons when the division is disqualified from representation for reasons of conflict or when the division deems it advisable that it not provide representation for the indigent person.

HISTORY: 2007 Act No. 108, Section 7, eff June 21, 2007.

Editor's Note

Prior laws: 2005 Act No. 103, Section 2; 1976 Code Section 17-3-350.

SECTION 17-3-380. Funding.

The commission will be funded by appropriations to the commission in the state General Appropriations Act including federal funds as may be available.

HISTORY: 2007 Act No. 108, Section 7, eff June 21, 2007.

Editor's Note

Prior law: 2005 Act No. 103, Section 2; 1976 Code Section 17-3-360.

ARTICLE 5

Circuit Public Defenders

SECTION 17-3-510. Circuit Public Defender Selection Panel; county representation; nomination of Circuit Public Defender; election by South Carolina Prosecution Coordination Commission.

(A) There is created in each judicial circuit in the State a Circuit Public Defender Selection Panel, the membership of which is composed of, and must be elected by, the active, licensed attorneys who reside within the counties of each judicial circuit. Each county in each judicial circuit must be represented by at least one member and the remaining members must be determined by equal weighting of county population based on the most recent decennial census and the most recent annual county appropriations to public defender operations according to the following formula.

(1) percentage of distribution of population plus the percentage of distribution of appropriations for public defender operations divided by two and rounded to the nearest whole number;

(2) the weighted values of each county multiplied by the number of remaining members in each Circuit Public Defender Selection Panel determines the number of additional members each county must have on the panel.

Judicial circuits with three or less counties must have five members. Judicial circuits with four counties must have seven members. Judicial circuits with five counties must have nine members.

(B) A solicitor, assistant solicitor, an employee of a solicitor's office, or an employee of the South Carolina Prosecution Coordination Commission may not serve as a member of a Circuit Public Defender Selection Panel. Members of a Circuit Public Defender Selection Panel must reside in the judicial circuit in which they serve. Circuit Public Defender Selection Panel members shall serve for a term of five years. A vacancy for an appointed member must be in the same manner of the original appointment filled by the appointing authority.

(C) By majority vote of its membership, the Circuit Public Defender Selection Panel shall nominate a person to serve as the circuit public defender in the judicial circuit as provided in this article. The commission shall, by majority vote of its members, accept or reject the nomination, but may not substitute the name of another person. Initial appointments of circuit public defenders must be made in order for the first appointees to take office no later than one year from the effective date of this act, for a term of four years. A circuit public defender may be reappointed by the commission to serve successive terms following the same manner of the original appointment. The circuit public defender for each judicial circuit must be a full-time employee of the State and must be compensated and have the same benefits as the circuit solicitor. A circuit public defender may not engage in the private practice of law or another full-time business for profit.

(D) A circuit public defender may be removed for cause by a majority vote of the commission.

(E) If a vacancy occurs, by death, resignation, or otherwise, in the position of circuit public defender, the commission shall appoint an interim circuit public defender to serve until a replacement has been selected by the commission. The Circuit Public Defender Selection Panel shall nominate a replacement circuit public defender within three months of the occurrence of the vacancy. Selection of a replacement must be in the same manner as the original appointment.

HISTORY: 2007 Act No. 108, Section 3, eff. June 21, 2007.

SECTION 17-3-520. Circuit public defender; qualifications; responsibilities.

(A) In order for a person to be eligible to fill the position of circuit public defender, the person must:

- (1) be at least twenty-five years of age;
 - (2) have been admitted and licensed to practice law in all courts of the State for at least five years;
 - (3) be a member in good standing of the South Carolina Bar, at all times; and
 - (4) be competent to counsel and defend a person charged with a capital felony and be certified at all times to defend capital cases in the State.
- (B) A circuit public defender is responsible for:
- (1) administering and coordinating the day-to-day operations of their respective offices, supervising the

public defenders and other staff serving in the offices, and actively participating in the representation of clients throughout the judicial circuit;

(2) keeping and maintaining appropriate records, which includes:

- (i) the number of persons represented pursuant to the provisions of this chapter, including cases assigned to other attorneys because of conflicts of interest;
 - (ii) the offenses charged, the outcome of each case, the expenditures made in carrying out the duties imposed by this article; and
 - (iii) other information and data as the commission may from time to time require;
- (3) establishing a juvenile offender division within the circuit public defender office to specialize in the criminal defense of juveniles;
- (4) preparing and submitting annually to the executive director of the commission a proposed budget for the provision of circuit-wide indigent defense services, an annual report containing pertinent data on the operation, costs, and needs of the circuit defender office, and other information as the commission or executive director may require;
- (5) assisting the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to the applicable provisions of Section 17-3-310;

(6) developing and presenting for the commission's approval a circuit plan for the delivery of criminal indigent defense services;

(7) establishing processes and procedures consistent with commission standards to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(8) negotiating and entering into contracts, as appropriate and when authorized by the commission, with independent counsel actively practicing within the circuit for the provision of indigent defense services in cases in which a conflict of interest exists in the circuit public defender office and in other criminal cases in the circuit in which indigent defense representation by independent counsel is necessary or advisable;

(9) establishing processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(10) establishing administrative management procedures for circuit and county offices;

(11) establishing procedures in conformity with commission standards for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of the charges, potential punishments, and the legal skills required to provide effective assistance of counsel;

(12) establishing policies and procedures consistent with commission standards and Supreme Court Rules for assigning counsel for indigent persons in capital cases;

(13) establishing and supervising consistent commission standards, a training and performance evaluation

program for attorneys and non-attorney staff members and contractors;

(14) establishing procedures consistent with commission standards to handle complaints involving indigent defense performance and to ensure that public defenders, office personnel, contract and appointed attorneys and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the rules and disciplinary jurisdiction of the South Carolina Supreme Court; and

(15) performance of other duties assigned by the commission.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-530. Chief county public defenders, responsibilities and duties.

(A) Each circuit public defender may employ, assign, and supervise one or more chief county public defenders in the counties within the circuit to assist in managing, supervising, and providing indigent defense representation in the circuit.

(B) Each chief county public defender must be responsible for:

- (1) managing, supervising, and providing public defender services within the assigned county or counties;
- (2) performing other duties as assigned by the circuit public defender, including duties that may be assigned throughout the circuit; and
- (3) keeping a record of public defender and associated services and expenses in the assigned county or counties and submitting the records to the circuit public defender as requested.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-540. Maintenance and staffing of county public defender offices.

(A) Subject to the provisions of this section, the circuit public defender in each judicial circuit may maintain offices and employ chief county public defenders, assistant public defenders, investigators, and other staff as necessary to provide adequate and meaningful representation of indigent clients within the counties of the judicial circuit. Personnel employed pursuant to the provisions of this section serve at the pleasure of the circuit public defender and have responsibilities as the circuit public defender directs.

(B) These employees are employees of the administering county and entitled to the same fringe benefits as other personnel employed by the administering county. All personnel costs including fringe benefits must be paid by the administering county, but must be reimbursed to the administering county from operational funds provided to the circuit public defender office from county and state appropriated funds.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-550. Funding.

No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-560. Administration of funds.

Each circuit public defender shall expend the funds received from the counties in the circuit, the State, and other sources for the general operations of the circuit defenders office including reimbursement to the administering county for employee compensation and fringe benefits. Each circuit public defender shall enter into an agreement with the appropriate county within the judicial circuit to administer the funds provided pursuant to the provisions of this article and the funds must be directed to the administering county. The administering county shall account for the receipt and disbursement of the funds separately from other funds administered by the county.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-570. Administration of personnel.

(A) All public defenders and other personnel employed by a county public defender corporation on a full-time or a part-time basis are considered employees of the circuit public defenders office in the judicial circuit in which they serve. No employee currently employed pursuant to the provisions of this section may be terminated, except for cause for a period of one year from the effective date of employment by the circuit public defender office. No employee salaries and benefits, including accrued leave, may be less than that which the employee is earning as of the effective date of employment by the circuit public defender office.

(B) Each circuit public defender is authorized to employ administrative, clerical, and paraprofessional personnel as may be authorized by the commission based on funds appropriated by the General Assembly or otherwise available provided, however, that each circuit public defender is authorized not less than two positions as provided in this section. In authorizing administrative, clerical, and paraprofessional personnel, the commission shall consider the caseload, present staff, and resources available to each circuit public defender and shall make authorizations as will contribute to the efficiency of individual circuit public defenders in providing effective criminal defense for indigent defendants.

(C) All personnel employed by the circuit public defenders pursuant to this article shall be employees of the administering county and shall be compensated based on the unclassified service schedule of the South Carolina Merit System of Personnel Administration.

(D) Personnel employed by the circuit public defenders pursuant to this article shall have the authority, duties, powers, and responsibilities as are authorized by law or as assigned by the circuit public defender and shall serve at the pleasure of the circuit public defender.

(E) The circuit public defender shall fix the compensation of each state-paid employee appointed pursuant to this article in accordance with the class to which the person is appointed and the appropriate step of the salary schedule. All salary advancements must be based on quality of work, training, and performance. A reduction in salary must be made in accordance with the salary schedule for the position and the policies, rules, or regulations adopted by the commission.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-580. Public defenders; requirements as to employment.

(A) A public defender employed full-time by the circuit public defender shall not engage in the private practice of law for profit.

(B) A public defender employed by the circuit public defender must be a member of the South Carolina Bar and must be admitted to practice before all courts of this State.

(C) A public defender shall serve at the pleasure of the circuit public defender and shall have the authority, powers, and duties as assigned by the circuit public defender.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-590. Office space and equipment

The governing body of the county shall provide, in conjunction and cooperation with the other counties in the judicial circuit and in a pro rata share according to the population of each county, appropriate offices, utilities, telephone expenses, materials, and supplies as are necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

SECTION 17-3-600. Existing contracts for providing indigent defense services.

All contracts in force on the date this legislation is effective between private attorneys and county indigent defense corporations for the provision of indigent defense services within a county or counties shall remain in force and be recognized by the commission and circuit public defender offices until their respective expiration dates or one year from the effective date of this act, whichever is earlier.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

(3) The duties of the task force shall be to:

(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.

OSPD has prepared two reports on felony level indigent defense. In 2014 the report was on county spending. The most significant takeaway from the report was the vast disparity in spending per capita by county. The 2016 report on caseloads demonstrated a similar disparity across counties. Because the counties with the most significant caseload concerns have higher revenue potential based on property values it does not appear that the “needs” for state-support are necessarily funding.

Without objective standards to assess workload and performance of defense counsel it is impossible to say what is needed. There are many counties that appear to be spending more than is necessary to meet the need. Others are clearly underfunding indigent defense. This translates to a significant human cost to the individuals deprived of their Constitutional rights but also adds to the local jail costs and to the prison costs of the state.

Without a state-level body setting objective standards and evaluating systems under those standards the people of the state of Mississippi will never know if or to what extent the indigent defense system suffers from waste, fraud or abuse. In June our State Auditor released a Performance Audit of the Office of Capital Post Conviction Counsel. OSA reached the same conclusion and recommended creating a formal oversight structure to ensure compliance with state law and monitoring of workload and staffing needs.

(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.

Mississippi is the only state in the Southeast that has primarily local funding and is locally administered. Of the 15 states in the region, 10 have primarily state funding of indigent defense. South Carolina has a 50/50 split between state and local funds and Louisiana depends primarily on criminal assessments. Only Georgia, Mississippi and Texas have primarily local funding. Twelve of the states have a state-level commission overseeing the delivery of services. Only Alabama, Florida and Mississippi do not. Florida elects public defenders. Alabama administers funds through a Defender Services division of that state’s equivalent of our DFA. It uses local selection committees to select delivery models and defenders.

The state most comparable to Mississippi is our neighboring state of Arkansas. Arkansas and Mississippi have approximately the same population but according to FBI UCR data Arkansas has a higher crime rate. Arkansas however has a lower incarceration rate. Arkansas created a state-level commission in 1993 to oversee indigent defense services in all courts. The most recent budget for Arkansas’ Public Defender Commission was approximately \$24.6 million. OSPD estimates Mississippi counties are now spending \$14.5 million on felony defense alone and OSPD and CPCC have total spending of about \$4.5 million. Local governments spend additional funds on misdemeanor and Youth Court indigent defense.

For comparison Mississippi spends just over \$25 million for felony level prosecution. The counties provide support to the DA’s similar to what Arkansas counties provide public defenders. Mississippi Counties and cities also fund misdemeanor and Youth Court prosecution. Appeals and post-conviction attorneys for the prosecution are funded by the state through the Attorney General.

The problem may not be how much is being spent but how efficiently or inefficiently it is being spent.

(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

Mississippi is the only state that requires primarily local funding and provides no state-level oversight, or any oversight. Mississippi is the only state that leaves judges to select, supervise and set the budgets for indigent defense service providers. While judges must, in cases of necessity, intervene and order the expenditure of funds to ensure Constitutional rights of individuals are protected; allowing the daily operations of an essential governmental function to be administered and appropriations ordered by the judicial branch raises a “Separation of Powers” question.

OSPD PROPOSAL FOR REORGANIZATION OF INDIGENT DEFENSE DELIVERY SERVICES

Plan to reorganize indigent defense system to provide oversight and accountability to ensure Constitutional compliance in a fiscally efficient manner.

Part 1: Amend Public Defender Task Force law to create Oversight Task Force with authority to promulgate standards; evaluate performance and report findings. PDOTF would also manage capital conflict funds and training for all indigent defenders. The effective date would be July 1, 2018 for all provisions except training. To allow for start-up and transition Training Division would remain at OSPD until January 1, 2019 at which time responsibilities and funding would move to PDOTF.

Part 2: Amend State Defender law to move training and data collection and reporting requirements to PDOTF. OSPD would report to PDOTF but appointment of State Defender would remain with Governor with advice and consent of Senate. Would move capital conflicts (currently not funded) to PDOTF. Make other technical amendments. These provisions would take effect January 1, 2019 to allow time for PDOTF to become operational. To provide oversight of the local indigent defense services the Office of District Defender would be created and funded through the state general fund. This portion of the bill would be effective January 1, 2020. No funding would be necessary until FY 2020 and full funding (approximately \$4M new funds) not until FY 2021. This would allow for transition from the existing local public defender offices.

Part 3: Amend the local public defender law to conform to the District Defender system effective January 1, 2020. The DD offices would serve as a platform to build comprehensive public defender offices with local funding as an alternative to use of assigned counsel.

Part 4: Amend Capital Post Conviction Counsel law to transfer capital conflicts and funding to PDOTF. CPCC would report to PDOTF but appointment of director would remain with Governor with advice and consent of Senate. Effective date would be January 1, 2019.

Part 5: Amend appointment and compensation statutes to conform. Provide PDOTF oversight and limited review of funding. Effective January 1, 2019.

Part 6: Bring forward sections on Youth Court defense services.

PART 1

§ 25-32-71. Creation of task force; members; officer; adoption of rules; reimbursement of expenses; duties ~~[Repealed effective July 1, 2018]~~

(1) There is created the Mississippi Public Defender Oversight Task Force which shall be composed of ~~thirteen (13)~~ nine (9) members as follows:

- ~~(a) The President of the Mississippi Public Defender Association, or his designee;~~
- ~~—(b) The President of the Mississippi Prosecutors Association, or his designee;~~
- ~~—(c) A representative of the Administrative Office of Courts;~~
- ~~—(d) A representative of the Mississippi Supreme Court;~~
- ~~—(e) A representative of the Conference of Circuit Judges;~~
- ~~—(f) A representative of the Mississippi Attorney General's Office;~~
- ~~—(g) A representative of the Mississippi Association of Supervisors;~~
- ~~—(h) A representative of The Mississippi Bar;~~
- ~~—(i) A representative of the Magnolia Bar Association;~~
- ~~—(j) The Chairman of the Senate Judiciary Committee, Division B, or his designee;~~
- ~~—(k) The Chairman of the Senate Appropriations Committee, or his designee;~~
- ~~—(l) The Chairman of the House Judiciary En Banc Committee, or his designee;~~
- ~~—(m) The Chairman of the House Appropriations Committee, or his designee.~~
- (a) Two judges or justices designated by the Chief Justice, one of which shall be a Circuit Court Judge;
- (b) A member of the House of Representatives designated by the Speaker of the House;
- (c) A member of the Senate designated by the Lieutenant Governor;
- (d) The Dean of the University of Mississippi School of Law or a designee;
- (e) The Dean of Mississippi College School of Law or a designee;

(f) A practicing attorney designated by the President of the Mississippi Bar;

(g) A practicing attorney designated by the President of the Magnolia Bar;

(h) A representative of the Mississippi Association of Supervisors designated by the President of that Association.

(2) Members shall serve four years or until a replacement has been designated. At its first meeting, the task force shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its business and keeping records. Members of the task force shall receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the task force. Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41 and the legislative members of the task force shall receive the expense allowance provided for in Section 5-1-47.

(3) The duties of the task force shall be to:

~~—(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.~~

~~—(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.~~

~~—(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.~~

(a) establish standards for an effective indigent defense system throughout the State of Mississippi. Such standards may include, but are not limited to:

(i) standards for determining who qualifies as an indigent person;

(ii) standards for maximum caseloads for full-time and part-time indigent defenders to include a uniform definition of what constitutes a case;

(iii) standards for compensation of counsel and support services for assigned counsel;

(iv) standards for minimum education, training and experience of attorneys appointed or employed as indigent defenders;

(v) standards for performance of defense counsel in criminal and youth court cases.

(b) review records of the operation of the indigent defender system, including, but not limited to, the following:

(i) Detailed descriptions of each city, county and district indigent defender system;

(ii) Caseloads of each indigent defender and number of cases assigned to private attorneys;

(iii) Expenditures on indigent defense in each city, county and district.

(c) report to the Legislature each year at least one (1) month before the convening of the regular session all standards approved; an assessment of compliance with the standards by the Office of the State Public Defender, Office of Capital Post-Conviction Counsel and any district, city or county indigent defense provider; an accounting of all indigent defense expenditures by state or local government; and any recommendations for the improvement of indigent defense services.

~~(4) This section shall stand repealed on July 1, 2018.~~

(4) The Task Force is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of an executive director and any necessary staff as determined by the Task Force and approved by the Legislature and to establish their salaries and expenses of the office; to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to enter into and perform contracts and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices within the funds appropriated for such purpose; and to incur and pay such other expenses as are appropriate and customary to the operation of the office, including but not limited to expenses associated with capital conflict cases pursuant to Miss. Code Sections 99-18-17 and 99-39-117.

(5) The Task Force shall operate a Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by the Task Force. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (i) education and training for public defenders practicing in all state, county, municipal and youth courts; (ii) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (iii) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.

PART 2

§ 99-18-1. Office of State Public Defender created; personnel; funding sources; qualifications, duties, removal of state defender; funding of agency expenses; deposit of monies into State General Fund

(1) There is hereby created the Office of State Public Defender. The Office of State Public Defender shall consist of a State Defender who shall be appointed by the Governor with the advice and consent of the Senate for a term of four (4) years and staffed by any necessary personnel as determined and hired by the State Defender.

~~(2) Funding for the Office of State Public Defender shall come from funds available in the Capital Defense Counsel Fund, the Indigent Appeals Fund and the Public Defenders Education Fund as determined by the State Defender. The State Defender shall have the authority to transfer funds between the various funds to efficiently and effectively accomplish the mission of the Office of State Public Defender and its divisions.~~

(3) The State Defender must be a duly licensed attorney admitted to the practice of law in this state, have practiced in the area of criminal law for at least five (5) years and shall meet all qualifications to serve as lead trial and appellate counsel in death penalty cases as may be set by the Supreme Court of Mississippi. The salary of the State Defender shall be no more than the maximum amount allowed by statute for a district attorney.

(4) The State Defender may be removed by the Governor upon finding that the State Defender is not qualified under law, has failed to perform the duties of the office, or has acted beyond the scope of the authority granted by law for the office.

(5) The Office of State Public Defender shall be responsible for the administration, budget and finances of the Divisions of Capital Defense Counsel; and Indigent Appeals ~~and Public Defender Training~~, which shall be divisions of the Office of State Public Defender.

(6) The State Defender may simultaneously serve as State Defender and as director of one or more divisions but shall receive no additional compensation for doing so. Nothing in this chapter shall prohibit the State Defender from directly representing clients of the office. Nothing in this chapter shall be construed to prevent an employee of one (1) division of the Office of the State Public Defender from working, in whole or in part, for another division.

~~(7) The State Defender shall coordinate the collection and dissemination of statistical data and make such reports as are required of the divisions, develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force and to act as spokesperson for all matters relating to indigent defense representation.~~

(8) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(9) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

§ 99-18-3. Capital Defense Counsel Division created; personnel; appointment to office; qualifications; removal

There is hereby created the Capital Defense Counsel Division within the Office of the State Public Defender. This office shall consist of a director, sometimes referred to as Capital Defender, who shall be an attorney qualified to serve as lead counsel in death penalty eligible cases and staffed by any necessary personnel as determined and hired by the State Defender. The Capital Defender shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Capital Defender and all other attorneys in the office shall be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The Capital Defender may be removed by the State Defender upon finding that the Capital Defender is not qualified under law, has failed to perform the duties of the office, or has acted beyond the scope of the authority granted by law for the office.

§ 99-18-5. Purpose of Capital Defense Counsel Division

The Capital Defense Counsel Division is created within the Office of the State Public Defender for the purpose of providing representation to indigent parties under indictment for death penalty eligible offenses and to perform such other duties as set forth by law.

§ 99-18-7. Duties of division; attorneys appointed to office to be full time

The Capital Defense Counsel Division shall limit its activities to representation of defendants accused of death-eligible offenses and ancillary matters related directly to death-eligible offenses and other activities expressly authorized by statute. Representation by the division or by other court-appointed counsel under this chapter shall terminate upon completion of trial or direct appeal. The attorneys appointed to serve in the Capital Defense Counsel Division shall devote their entire time to the duties of the division, shall not represent any persons in other litigation, civil or criminal, nor in any other way engage in the practice of law, and shall in no manner, directly or indirectly, engage in lobbying activities for or against the death penalty. Any violation of this provision shall be grounds for termination from employment by the State Defender.

§ 99-18-9. Compensation

The Capital Defense Director appointed under this chapter shall be compensated at no more than the maximum amount allowed by statute for a district attorney, and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for an assistant district attorney.

§ 99-18-11. Office hours of operation

The Capital Defense Counsel Division shall be open Monday through Friday for not less than eight (8) hours each day and observe such holidays and closings as prescribed by statute.

§ 99-18-13. Powers and duties of State Defender

(1) The State Defender is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of division staff and to establish their salaries and expenses of the office; to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to enter into and perform contracts and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices within the funds appropriated for such purpose; and to incur and pay such other expenses as are appropriate and customary to the operation of the office.

(2) The State Defender may provide representation to parents or guardians who have been determined by the youth court judge to be indigent and in need of representation in an abuse, neglect or termination of parental rights proceeding or appeal therefrom. Representation may be provided by staff or contract counsel including, but not limited to, by contract with legal services organizations.

§ 99-18-15. Director to keep a docket of all indicted death eligible cases in Mississippi

The Capital Defense Director shall keep a docket of all indicted death-eligible cases originating in the courts of Mississippi which must, at all reasonable times, be open to inspection by the public and must show the county, district and court in which the cause is pending. The director shall prepare and maintain a roster of all death penalty cases in the courts of Mississippi indicating the current status of each case and submit this report to the Governor, Chief Justice of the Supreme Court and the Administrative Office of Courts as requested monthly. The director shall also report ~~monthly~~ to the Public Defender Oversight Taskforce in a form, manner and schedule prescribed by the Task Force ~~Administrative Office of Courts~~ the activities, receipts and expenditures of the office.

§ 99-18-17. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; Capital Defense Counsel Fund

(1) If at any time during the representation of two (2) or more defendants, the State Defender determines that the interests of those persons are so adverse or hostile they cannot all be represented by the staff of the Capital Counsel Division without conflict of interest, or if the State Defender determines that the volume or number of representations shall so require, the State Defender, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to refer such case to the Public Defender Oversight Taskforce who may employ qualified private counsel. Fees and expenses approved by order of the Public Defender Oversight Taskforce ~~the court of original jurisdiction~~, including investigative and expert witness expenses of such private counsel, shall be paid by funds appropriated ~~to the Capital Defense~~

Counsel Fund for this purpose.

~~(2) There is created in the State Treasury a special fund to be known as the Capital Defense Counsel Fund. The purpose of the fund shall be to provide funding for the Capital Defense Counsel Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:~~

~~—(a) Monies appropriated by the Legislature for the purposes of funding the Capital Defense Counsel Division;~~

~~—(b) The interest accruing to the fund;~~

~~—(c) Monies received under the provisions of Section 99-19-73;~~

~~—(d) Monies received from the federal government;~~

~~—(e) Donations; and~~

~~—(f) Monies received from such other sources as may be provided by law.~~

§ 99-18-19. Indigent Appeals Division created; director and staff; compensation; duties;

(1) There is created the Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Indigent Appeals Director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The Indigent Appeals Director shall be compensated at no more than the maximum amount allowed by statute for a district attorney, and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for an assistant district attorney.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload as determined by the State Defender, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by contract counsel must be approved by the court. At the sole discretion of the State Defender, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi

Supreme Court or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

§ 99-18-21. Office of District Public Defender created; personnel; funding sources; qualifications, duties, removal of district defender; funding of agency expenses;

(1) There is hereby created in each circuit court district the Office of District Public Defender. The Office of District Public Defender shall consist of a District Defender who shall be appointed by the District Defender Selection Panel established pursuant to this section, for a term of four (4) years and staffed by any necessary personnel as determined and hired by the District Defender.

(2) The District Defender must be a duly licensed attorney admitted to the practice of law in this state, have practiced in the area of criminal law for at least five (5) years and shall meet all qualifications to serve as trial counsel in death penalty cases as may be set by the Supreme Court of Mississippi. The salary of the District Defender shall be no more than the maximum amount allowed by statute for a district attorney.

(3) The District Defender may be removed by the State Defender upon finding that the District Defender is not qualified under law, has failed to perform the duties of the office, or has acted beyond the scope of the authority granted by law for the office.

(4) The District Public Defender shall be responsible for oversight of the indigent defense delivery system in the district including collection of data as requested by the State Defender and/or the Public Defender Oversight Task Force, evaluation of the performance of attorneys providing indigent defense and other standards compliance matters. The District Defender shall handle a caseload that accounts for the administrative responsibilities of the position as approved by the State Defender. The District Defender shall be provided, by the counties in the district on a per capita basis, with office space, administrative assistance, and all reasonable expenses of operating the office at least equal to district attorney.

(5) The District Defender, subject to approval of the State Defender and agreement of a county or counties in the district, may employ assistant public defenders on a full-time or part-time basis as well as investigators, paralegals and social service providers to the extent funds are provided by a county or otherwise available as provided for in §§ 25-32-1 through 25-32-7.

(7) There shall be a District Defender Selection Panel in each circuit court district. The panel shall consist of a judge from the district appointed by the Senior Circuit Judge, an attorney practicing in the district who shall be appointed by the president of the Mississippi Bar and an attorney practicing in the district who shall be appointed by the president of the Magnolia Bar. In the event of a vacancy in the position of District Public Defender the panel shall be convened by the State Defender to evaluate and select the District Defender.

~~§ 99-40-1. Indigent Appeals Division created; director and staff; compensation; duties; Indigent Appeals Fund; Public Defender Training Division created; Public Defenders Education Fund~~

~~—(1) There is created the Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Indigent Appeals Director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the Indigent Appeals Director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of an assistant district attorney.~~

~~(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload as determined by the State Defender, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. At the sole discretion of the State Defender, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi Supreme Court or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.~~

~~(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the Indigent Appeals Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:~~

~~—(a) Monies appropriated by the Legislature for the purposes of funding the Indigent Appeals Division;~~

~~—(b) The interest accruing to the fund;~~

~~—(c) Monies received under the provisions of Section 99-19-73;~~

~~—(d) Monies received from the federal government;~~

~~—(e) Donations; and~~

~~—(f) Monies received from such other sources as may be provided by law.~~

~~(4) (a) There is created in the Office of the State Public Defender the Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by~~

~~the State Defender. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (i) education and training for public defenders practicing in all state, county, municipal and youth courts; (ii) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (iii) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.~~

~~—(b) There is created in the State Treasury a special fund to be known as the Public Defenders Education Fund. The purpose of the fund shall be to provide funding for the training of public defenders. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:~~

- ~~—(i) Monies appropriated by the Legislature for the purposes of public defender training;~~
- ~~—(ii) The interest accruing to the fund;~~
- ~~—(iii) Monies received under the provisions of Section 99-19-73;~~
- ~~—(iv) Monies received from the federal government;~~
- ~~—(v) Donations; and~~
- ~~—(vi) Monies received from such other sources as may be provided by law.~~

PART 3

§ 25-32-1. Establishment of office by board of supervisors

Should the board of supervisors of any county or the boards of supervisors of two (2) or more counties in the same circuit court district determine by order spread upon their minutes that the county or counties have a sufficient number of indigent defendant cases ~~to establish an office of public defender~~, the board of supervisors or boards of supervisors are authorized and empowered, in their discretion and with the agreement of the District Defender, to fund assistant district defender positions and establish the office, provide office space, personnel and funding for the office, and to perform any and all functions necessary for the efficient operation of such an office to the end that adequate legal defense for indigent persons accused of crime shall be provided at every critical stage of their cases as an alternative to court appointed counsel. Said order shall specify whether the assistant public defender shall be full-time or part-time.

§ 25-32-3. ~~Circuit judge shall appoint public defender for county;~~ assistant public defender

~~—(1) When the office of public defender is established, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint a practicing attorney to serve the county or counties as public defender until the end of the term of office of the district attorney and thereafter for a term of four (4) years and said term shall coincide with the term of the district attorney. Such appointee shall be selected from a list of two (2) or more attorneys recommended by the county or regional bar association. In the event a vacancy shall occur in the office of the public defender, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint another person to serve as public defender until the end of the regular term of office.~~

(2) Assistant public defenders may be authorized by the board of supervisors, or boards of supervisors if two (2) or more counties are acting jointly. The district public defender shall appoint all assistant public defenders. Such assistant public defenders may be compensated in such an amount as may be authorized by the respective board of supervisors; provided, however, that in no case may such assistant public defenders receive compensation in an amount greater than that received by the district public defender.

§ 25-32-5. ~~Compensation;~~ private practice of law

~~—Compensation for the public defender shall be fixed by the board of supervisors or boards of supervisors, if two (2) or more counties are acting jointly; provided, however, the compensation for a public defender, who shall be full time, representing an entire circuit court district shall not be less than the compensation of the district attorney, the compensation for a public defender representing one (1) county shall not be less than the compensation of the county prosecuting attorney and the compensation for a public defender representing two (2) or more counties, but~~

~~less than the entire circuit court district, shall not be less than the aggregate of the compensation for county prosecuting attorneys of the counties served, but in no event to exceed the compensation of the district attorney.~~ No full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law. Part-time public defenders or part-time assistant public defenders may engage in the private practice of the law as long as such practice does not relate to the prosecution of criminal matters.

§ 25-32-7. Office and office expenses; payment of compensation and expenses

(1) The district public defender shall be provided with office space, secretarial assistance, and all reasonable expenses of operating the office, at least equal to or more than the county prosecuting attorney, but not more in aggregate than ~~or~~ the district attorney receives from all counties within the district ~~if the public defender represents the entire circuit court district.~~ The compensation and expenses of the district public defender's office not covered by the State Defender shall be paid by the county or counties if two (2) or more counties are acting jointly. The funds shall be paid upon allowance by the board of supervisors by order spread upon the minutes of the board.

(2) The public defender is authorized to assign the duties of and exercise supervision over all employees of the office without regard to the source of funding for those employees.

§ 25-32-9. Affidavit of indigency; statement of assets; representation of persons in need of mental treatment

(1) When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the public defender shall represent said person unless the right to counsel be waived by such person. Provided further, a statement shall be executed by the alleged indigent, under oath, listing all assets available to the indigent for the payment of attorney's fees, including the ownership of any property, real or personal, and setting out therein the alleged indigent's employment status, number of dependents, income from any source, the ability of his parents or spouse to provide an attorney's fee, and any other information which might prove or disprove a finding of indigency. The affidavit and statement shall be a part of the record in the case and shall be subject to review by the appropriate court. Based on review of the affidavit, statement or other appropriate evidence, if the appropriate court finds that the defendant is not indigent, said court shall terminate the representation of the defendant by the public defender.

When any person shall be arrested and charged with a misdemeanor, the presiding judge or justice, upon determination that the person is indigent as provided in this section, and that representation of the indigent is required, shall appoint the public defender whose duty it shall be to provide such representation. No person determined to be an indigent as provided in this

section shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel.

(2) The accused shall have such representation available at every critical stage of the proceedings against him where a substantial right may be affected.

(3) The public defender shall also represent persons in need of mental treatment, as provided under Sections 41-21-61 et seq. The chancery court may tax costs as provided in Sections 41-21-79 and 41-21-85.

§ 25-32-11. Duties; free access to accused

The duties of the public defender shall include the investigation of charges against the defendant and all facts surrounding the same, and shall include courtroom and appellate appearances on behalf of the defendant in all cases originating in state and county courts. The public defender shall have free access to the accused who shall have process to compel the attendance of witnesses in his favor.

§ 25-32-13. Appointment of counsel by court in conflict of interest cases; appointment of additional counsel where necessary

(1) If the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

(2) If the court finds that an indigent is a defendant in a case of such a nature that he cannot be properly represented by the public defender alone, the court shall appoint additional counsel to assist the public defender as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

§ 25-32-15. Termination of office

The county support for assistant public defenders authorized in §25-32-1 ~~office of public defender~~ may be terminated, in the discretion of the board of supervisors, by entering an order upon the minutes of the board of supervisors six (6) months prior to the expiration of the term of the district public defender. Such termination shall be effective at the end of the term of the public defender.

§ 25-32-17. Compensation, staff, office space, and secretarial assistance not to be reduced; authority to increase

The compensation, administrative staff, office space and secretarial assistance shall not be reduced or diminished but may be increased during the term of the district public defender.

§ 25-32-19. Obtaining financial, professional, investigatory, research, or other assistance

The public defender and the board of supervisors may cooperate with any individual or public agency, whether state or federal, or with any institution of higher learning of the State of Mississippi, to obtain by gift, grant or otherwise any financial, professional, investigatory or research or other assistance; provided, however, that any grants or any financial assistance whatever for the purpose herein set out shall be paid over to the board of supervisors and administered by it for the purposes herein set forth. The board shall have the authority to use any financial assistance or grants to extend and expand the facilities of the office.

PART 4

§ 99-39-101. Short title

This article may be cited as the "Mississippi Capital Post-Conviction Counsel Act."

§ 99-39-103. Office of Post-Conviction Counsel created; personnel; appointment to office; qualifications; removal

There is created the Mississippi Office of Capital Post-Conviction Counsel. This office shall consist of a director who shall be an attorney who shall meet all qualifications necessary to serve as post-conviction counsel for persons under a sentence of death and staffed by any necessary personnel as determined and hired by the director. The director shall be appointed by the Governor with the advice and consent of the Senate for a term of four (4) years, or until a successor takes office. The remaining attorneys and other staff shall be appointed by the director of the office and shall serve at the will and pleasure of the director. The director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The director may be removed from office by the Governor upon finding that the director is not qualified under law to serve as post-conviction counsel for persons under sentences of death, has failed to perform the duties of the office or has acted beyond the scope of the authority granted by law for the office.

§ 99-39-105. Purpose of office

The Office of Capital Post-Conviction Counsel is created for the purpose of providing representation to indigent parties under sentences of death in post-conviction proceedings, and to perform such other duties as set forth by law.

§ 99-39-107. Duties of office; attorneys appointed to office to be full time

The Office of Capital Post-Conviction Counsel shall limit its activities to the representation of inmates under sentence of death in post-conviction proceedings and ancillary matters related directly to post-conviction review of their convictions and sentences and other activities explicitly authorized in statute. Representation by the office or by private counsel under appointment by the office will end upon the filing of proceeding for federal habeas corpus review or for appointment of counsel to represent the defendant in federal habeas corpus proceedings. However, the office may continue representation if the office or a staff attorney employed by the office shall be appointed by a federal court to represent the inmate in federal habeas corpus proceedings. In such event, the office or the employee attorney shall apply to the federal court for compensation and expenses and shall upon receipt of payments by the federal court pay all sums received over to the office for deposit in the Special Capital Post-Conviction Counsel Fund as provided in Section 99-39-117, from which all expenses for investigation and litigation shall be disbursed. Representation in post-conviction proceedings shall further include representation of the inmate from the exhaustion of all state and federal post-conviction litigation until execution of the sentence or an adjudication resulting in either a new trial or a vacation of the death sentence. The attorneys appointed to serve in the Office of Capital Post-Conviction Counsel shall devote their entire

time to the duties of the office, shall not represent any persons in other litigation, civil or criminal, nor in any other way engage in the practice of law, and shall in no manner, directly or indirectly, participate in the trial of any person charged with capital murder or direct appeal of any person under sentence of death in the state, nor engage in lobbying activities for or against the death penalty. Any violation of this provision shall be grounds for termination from employment, in the case of the director, by the Governor, and in the case of other attorneys, by the director, ~~with approval of the Chief Justice.~~

§ 99-39-109. Compensation

The director appointed under this article shall be compensated at no more than the maximum amount allowed by statute for a district attorney, and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for an assistant district attorney.

§ 99-39-111. Office hours of operation

The Director of the Office of Post-Conviction Counsel shall keep the office open Monday through Friday for not less than eight (8) hours each day.

§ 99-39-113. Powers and duties of director; requirement of surety bond

In addition to the authority to represent persons under sentence of death in state post-conviction proceedings, the director is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of staff and to establish their salaries, and expenses of the office; to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to solicit and accept monies, gifts, grants or services from any public or private sources for the purpose of funding, operating and executing the statutory duties of the office; to enter into and perform contracts, including but not limited to, contracts and agreements necessary to obtain and receive monies, gifts, grants or services from federal, public and private sources, and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices; and to incur and pay such other expenses as are appropriate and customary to the operations of the office. The director shall be required to obtain a surety bond in the amount of not less than One Hundred Thousand Dollars (\$ 100,000.00) payable to the state. The cost of such bond shall be paid out of funds appropriated for the operations of the office. All salaries and other expenditures shall be paid from funds appropriated for such purposes augmented by funds received as gifts and grants from public and private sources.

§ 99-39-115. Director to keep a docket of all death penalty cases in Mississippi

The director shall keep a docket of all death penalty cases originating in the courts of Mississippi, which must at all reasonable times be open to the inspection of the public and must show the county, district and court in which the causes have been instituted. The director shall prepare and maintain a roster of all death penalty cases originating in the courts of Mississippi and pending in state and federal courts indicating the current status of each such case, and a history of those death penalty cases filed since 1976. Copies of such dockets and rosters shall be submitted to the Governor, Chief Justice of the Supreme Court and the Administrative Office of Courts ~~monthly~~ as requested. The director shall also

report ~~monthly~~ to the Public Defender Oversight Task Force in a form, manner and schedule prescribed by the ~~Task Force-Administrative Office of Courts~~ the activities, receipts and expenditures of the office.

§ 99-39-117. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; ~~Capital Post-Conviction Counsel Fund~~

(1) If at any time during the representation of two (2) or more defendants, the director determines that the interest of those persons are so adverse or hostile that they cannot all be represented by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to refer such case to the Public Defender Oversight Taskforce who may employ qualified private counsel. Fees and expenses, approved by the Public Defender Oversight Taskforce order of the appropriate court, including investigative and expert witness expenses of such private counsel shall be paid from funds appropriated ~~to the Capital Post-Conviction Counsel Fund~~ for this purpose.

(2) ~~There is created in the State Treasury a special fund to be known as the Capital Post-Conviction Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Post-Conviction Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Post-Conviction Counsel. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:~~

~~—(a) Monies appropriated by the Legislature for the purposes of funding the Office of Capital Post-Conviction Counsel;~~

~~—(b) The interest accruing to the fund;~~

~~—(c) Monies received under the provisions of Section 99-19-73;~~

~~—(d) Monies received from the federal government;~~

~~—(e) Donations; and~~

~~—(f) Monies received from such other sources as may be provided by law.~~

§ 99-39-119. Director authorized to solicit funds for purpose of funding and operating office

The director is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.

PART 5

§ 99-15-15. Appointment of counsel for indigents

When any person shall be charged with a felony, misdemeanor punishable by confinement ~~for ninety (90) days or more~~, or commission of an act of delinquency, the court or the judge in vacation, being satisfied that such person is an indigent person and is unable to employ counsel, shall may, in the discretion of the court, appoint counsel to defend him.

Such appointed counsel shall have free access to the accused who shall have process to compel the attendance of witnesses in his favor.

The accused shall have such representation available at every critical stage of the proceeding against him where a substantial right may be affected.

§ 99-15-17. Compensation of counsel; amount

The compensation for counsel for indigents appointed as provided in Section 99-15-15, shall be approved and allowed by the appropriate judge and in any one (1) case may not exceed one thousand dollars (\$ 1000.00) for representation in circuit court whether on appeal or originating in said court. Provided, however, if said case is not appealed to or does not originate in a court of record, the maximum compensation shall not exceed two hundred dollars (\$ 200.00) for any one (1) case, the amount of such compensation to be approved by a judge of the chancery court, county court or circuit court in the county where the case arises. Provided, however, in a capital case two (2) attorneys may be appointed, and the compensation may not exceed two thousand dollars (\$ 2,000.00) per case. If the case is appealed to the state supreme court by counsel appointed by the judge, the allowable fee for services on appeal shall not exceed one thousand dollars (\$ 1000.00) per case. These fee caps may be exceeded, in the discretion of the presiding judge after finding extraordinary circumstances. The attorney shall be paid a reasonable hourly rate consistent with standards adopted by the Public Defender Oversight Task Force which shall be inclusive of all regular expenses of operating a law office. In addition, the judge shall allow reimbursement of ~~actual~~ expenses for expert and investigative services on prior approval of the court. The attorney or attorneys so appointed shall itemize the time spent in defending said indigents together with an itemized statement of expenses of such defense, and shall present same to the appropriate judge. The fees and expenses as allowed by the appropriate judge shall be paid by the county treasurer out of the general fund of the county in which the prosecution was commenced.

§ 99-15-19. Compensation of counsel; reimbursement of county in certain cases

Any county paying counsel fees and expenses incurred on appeal to the supreme court or by virtue of any prosecution charging the commission of a crime on the premises of ~~the a~~ Mississippi State Penitentiary correctional facility or the commission of a crime by any escapee

therefrom, may request reimbursement of all such payments from the state treasurer. The state auditor shall issue his warrant, based upon a voucher sent by the treasurer of any county entitled to such reimbursement together with a certification that such sums have been allowed and paid. The state treasurer shall pay the amount of any such reimbursement out of any funds in the state treasury appropriated for such purpose.

§ 99-15-21. Compensation of counsel; method of payment

All compensation and reimbursements allowed by the judge shall be made on the basis of an itemized statement as to time and nature of work and the expense incurred by the appointed counsel. The ~~attorney general~~ Public Defender Oversight Task Force shall prepare and make available the proper form for the itemized statement which is to be submitted to the appropriate judge by the attorney or attorneys. Compensation and reimbursements authorized by Sections 99-15-15 through 99-15-21 shall be allowed only in cases in which the appointment is made subsequent to ~~April 5, 1971~~ January 1, 2019. In all cases in which counsel have been appointed prior to said date, compensation shall be allowed in the same manner and to the same extent as provided by law at the time such appointment was made. If an attorney or a county disagrees with the judge's decision on compensation either may petition the Public Defender Oversight Task Force for an increase or decrease in the amount. The Task Force shall promulgate rules governing this procedure.

PART 6

§ 19-9-96. Funding operation of youth court division

The board of supervisors of any county may, in its discretion, set aside, appropriate and expend moneys from the general fund to be used for funding of the operation of the youth court division other than a municipal youth court division. Such funds shall be expended for no other purpose than:

(a) Payment of the salaries of the referees, court administrators, youth court prosecutor when court appointed, youth court public defender, court reporters other than regular chancery court or county court reporters, clinical psychologists and other professional personnel, secretaries and other clerical or other court-appointed personnel, detention home employees, shelter home employees, halfway house employees and youth counsellors;

(b) Travel and training expenses;

(c) The operation of a youth court and related facilities, detention facilities, shelter home facilities, group homes and halfway houses;

(d) Volunteer programs or other court-authorized programs;

(e) Providing the youth court referee with a current set of the Mississippi Code of 1972 if a set has not been provided.

§ 43-21-201. Representation by counsel; youth court-appointed attorneys required to receive juvenile justice training; exemption; duties of youth court counsel

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings including, but not limited to, detention, adjudicatory and disposition hearings and parole or probation revocation proceedings. In delinquency matters the court shall appoint legal defense counsel who is not also a guardian ad litem for the same child. If the party is a child, the child shall be represented by counsel at all critical stages: detention, adjudicatory and disposition hearings; parole or probation revocation proceedings; and post-disposition matters. If indigent, the child shall have the right to have counsel appointed for him by the youth court.

(2) When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel.

(3) An attorney appointed to represent a delinquent child shall be required to complete annual juvenile justice training that is approved by the Mississippi Judicial College or the Mississippi Commission on Continuing Legal Education. The Mississippi Judicial College and the Mississippi Commission on Continuing Legal Education shall determine the amount of juvenile justice training and continuing education required to fulfill the requirements of this subsection. The Administrative Office of Courts shall maintain a roll of attorneys who have complied with the training requirements and shall enforce the provisions of this subsection. Should an attorney fail to complete the annual training requirement or fail to attend the required training within six (6) months of being appointed to a youth court case, the attorney shall be disqualified to serve and the youth court shall immediately terminate the representation and appoint another attorney. Attorneys appointed by a youth court to five (5) or fewer cases a year are exempt from the requirements of this subsection.

(4) The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct.

(5) An attorney shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the youth court, by filing a pleading, notice or motion signed by counsel or by appearing in open court and advising the youth court that he is representing a party. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party he represents. An attorney who has entered his appearance shall not be permitted to withdraw from the case until a timely appeal if any has been decided, except by leave of the court then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents.

(6) Each designee appointed by a youth court judge shall be subject to the Code of Judicial Conduct and shall govern himself or herself accordingly.